

R E P O R T

of the

ATTORNEY GENERAL

of the

STATE OF FLORIDA

FROM JANUARY 1, 1937, TO DECEMBER 31, 1938

**CARY D. LANDIS
GEORGE COUPER GIBBS
ATTORNEYS GENERAL**



Tallahassee, Fla.

1938

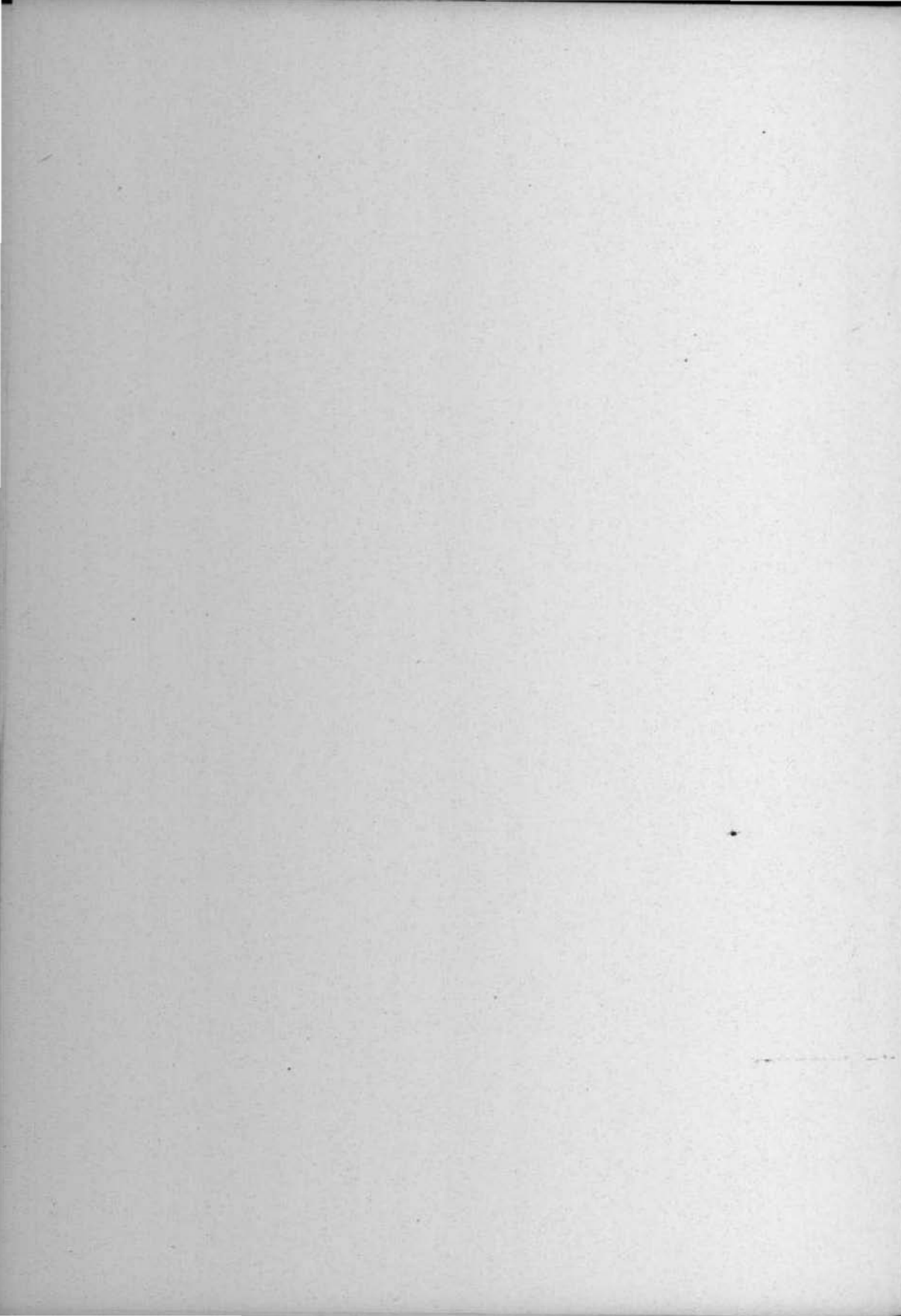


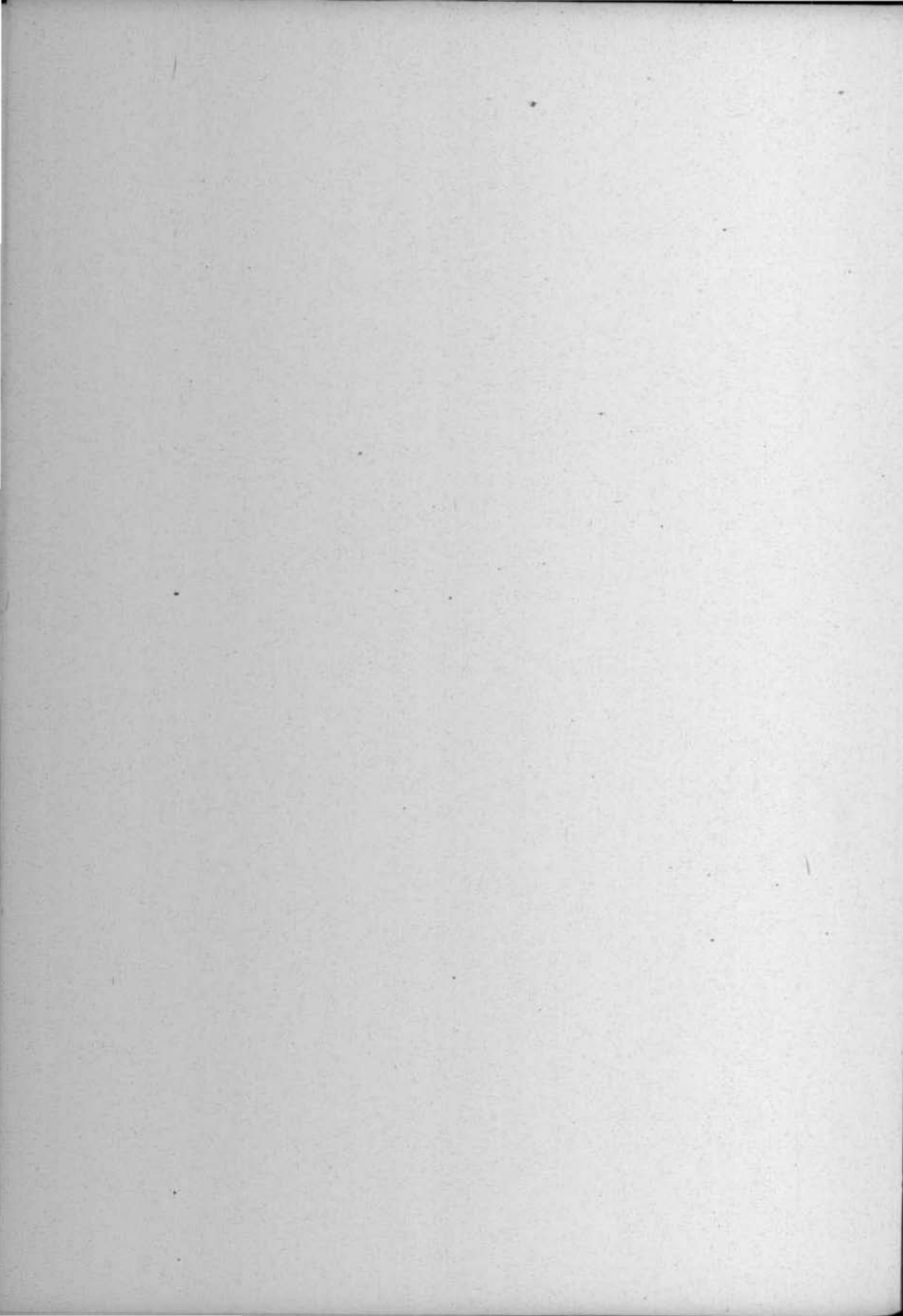
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I.

STATE LAW DEPARTMENT

GEORGE COUPER GIBBS	Attorney General
H. E. CARTER	Assistant Attorney General
ROY CAMPBELL	Assistant Attorney General
MARVIN C. MCINTOSH	Assistant Attorney General
WILLIAM P. ALLEN*	Assistant Attorney General
JOHN L. GRAHAM	Assistant Attorney General
J. COMPTON FRENCH	Assistant Attorney General
TYRUS A. NORWOOD	Assistant Attorney General
LAWRENCE A. TRUETT	Assistant Attorney General
ALLIE Y. BROWN	Chief Clerk, Bookkeeper and Supreme Court Reporter
LORRAINE W. EVANS	Secretary
MARGARET E. GANNON	Law Clerk-Stenographer
EVELYN DAVIS	Law Clerk-Stenographer
BERTA W. BOHLER	Law Clerk-Stenographer
HATTIE ROEBUCK	Law Clerk-Stenographer
FRANCES BOND	Law Clerk-Stenographer
MARION GARDINER	Stenographer
ANNIE T. ANDERSON	Stenographer
NELLIE CONE	Stenographer
ERMA K. VASON**	File Clerk
JOHN HORNE	Telephone Operator

*Resigned to take effect February 1, 1939, and Mr. Thomas J. Ellis has been appointed to take his place.

**Resigned to take effect February 1, 1939, and Mrs. Mordina Bragunier appointed to take her place.

II.

ATTORNEYS GENERAL OF FLORIDA

1845-1938

JOSEPH BRANCH	1845-1846
AUGUSTUS E. MAXWELL	1848-1848
JAMES T. ARCHER	1848-1848
DAVID P. HOGUE	1848-1853
MARIANO D. PAPY	1853-1860
JOHN B. GALBRAITH	1860-1868
JAMES D. WESTCOTT, JR.	1868-1868
A. R. MEEK	1868-1870
SHERMAN CONANT	1870-1870
J. B. C. DREW	1870-1872
H. BISSBEE, JR.	1872-1872
J. P. C. EMMONS	1872-1873
WILLIAM A. COCKE	1873-1877
GEORGE P. RANEY	1877-1885
C. M. COOPER	1885-1889
WILLIAM B. LAMAR	1889-1903
JAMES B. WHITFIELD	1903-1904
W. H. ELLIS	1904-1909
PARK TRAMMELL	1909-1913
THOMAS F. WEST	1913-1917
VAN C. SWEARINGEN	1917-1921
RIVERS BUFORD	1921-1925
J. B. JOHNSON	1925-1927
FRED H. DAVIS	1927-1931
CARY D. LANDIS	1931-1938
GEORGE COUPER GIBES	1938-

ASSISTANT ATTORNEYS GENERAL OF FLORIDA

CHARLES O. ANDREWS	1911-1919
GLENN TERRELL	1915-1917
WORTH TRAMMELL	1917-1921
STUART GILLIS	1919-1921
J. B. GAINES	1921-1926
MARVIN C. MCINTOSH	1921-1926
H. E. CARTER	1926-1939
ROY CAMPBELL	1926-1939
MARVIN C. MCINTOSH	1931-1939
ROBERT J. PLEUS	1933-1935
J. V. KEEN	1933-1936
IRA A. HUTCHINSON	1933-1935
JOHN L. GRAHAM	1935-1939
JAMES B. WATSON	1935-1937
W. P. ALLEN*	1936-1939
J. COMPTON FRENCH	1937-1939
TYRUS A. NORWOOD	1937-1939
LAWRENCE A. TRUETT	1937-1939
THOMAS ELLIS	1939-

SPECIAL ASSISTANTS TO THE ATTORNEY GENERAL UNDER CHAPTER 11828, ACTS OF 1927

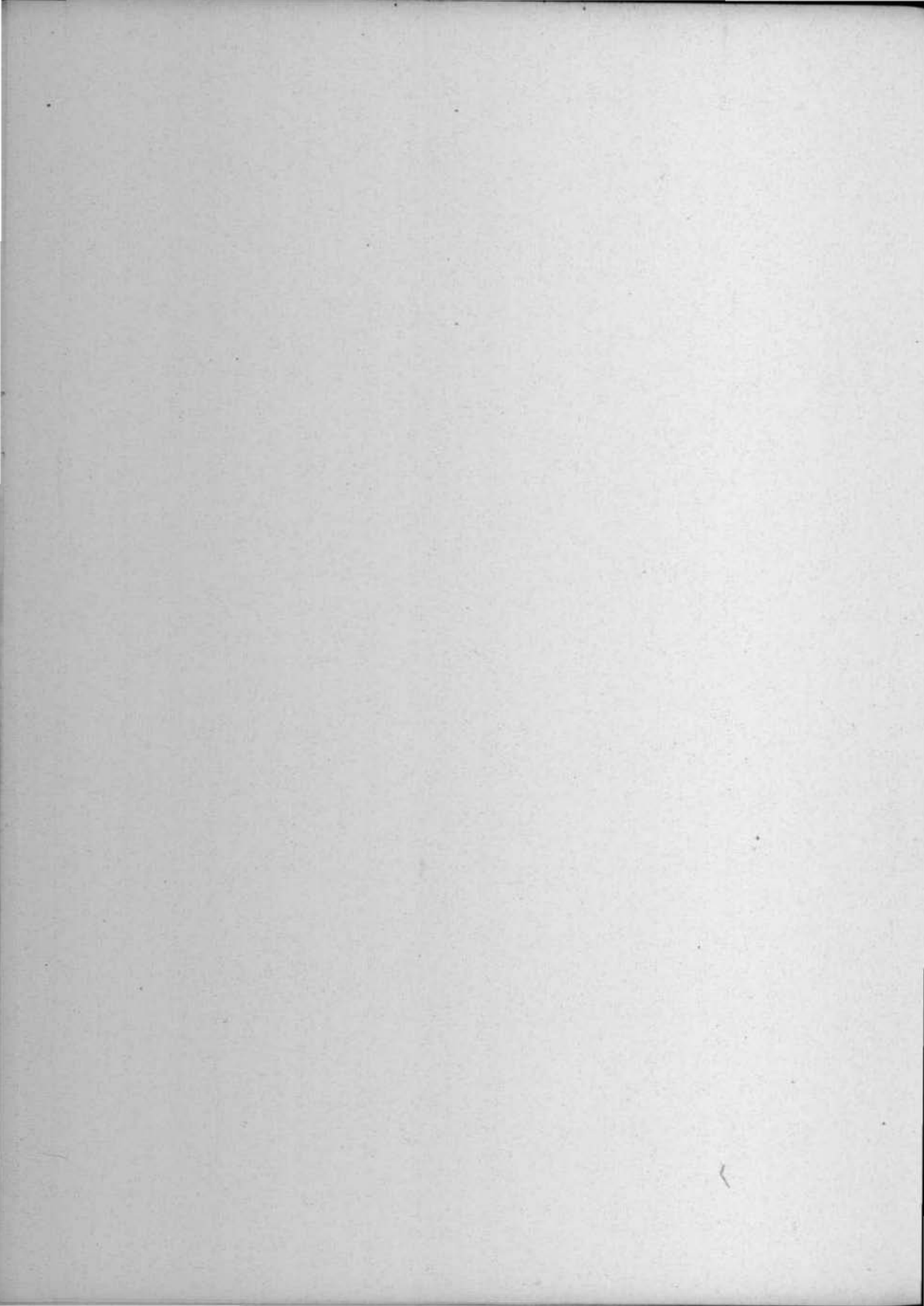
(Repealed by Chapter 14556, Acts 1920
Approved June 19, 1929)

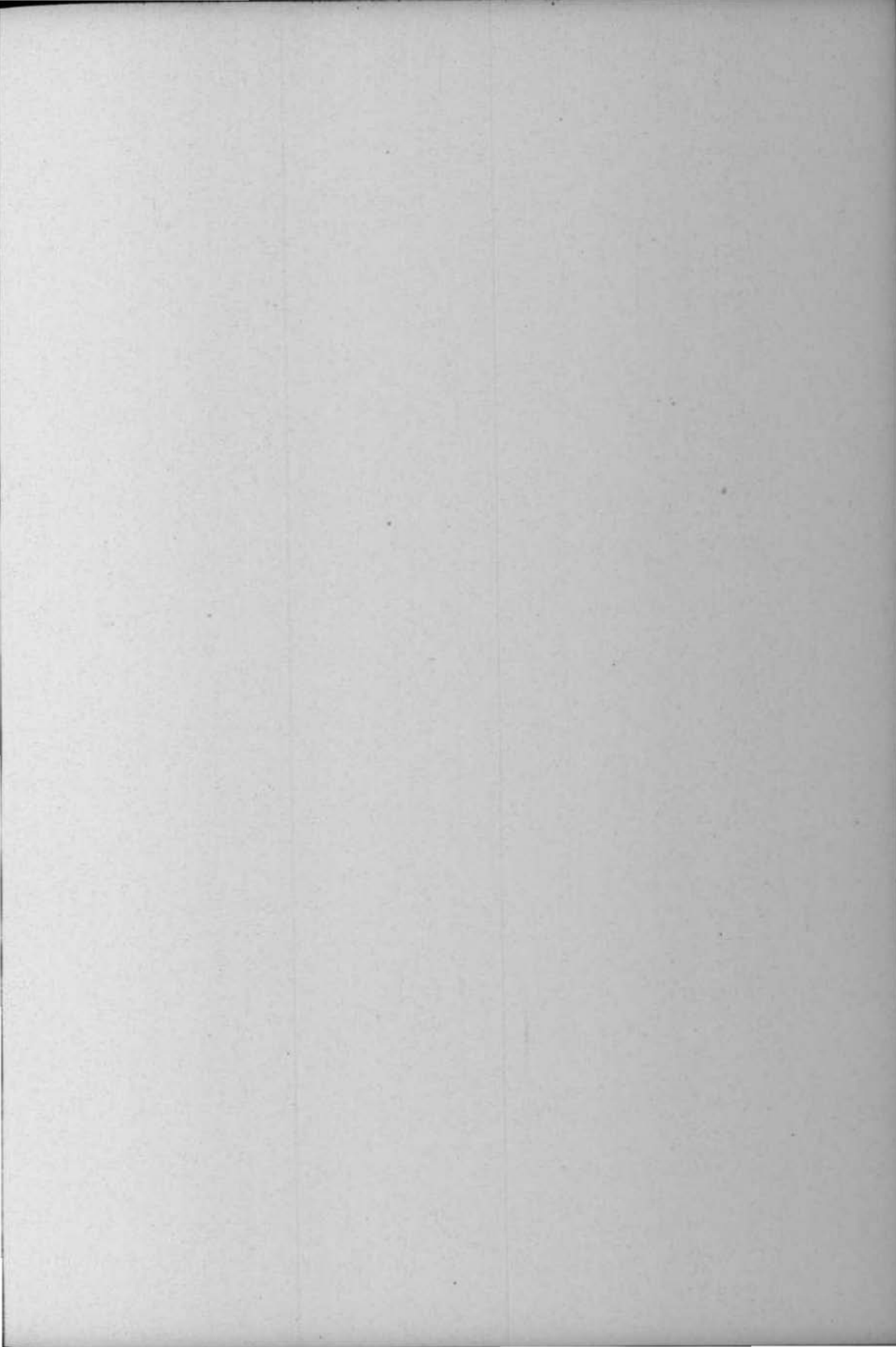
A. H. WILLIAMS, Tallahassee, Florida.

J. MCHENRY JONES, Pensacola, Florida.

WALLACE TERVIN, Bradenton, Florida.

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FRED HENRY DAVIS

III.

IN MEMORIAM

FRED HENRY DAVIS

Fred Henry Davis was born May 18, 1894, at Greenville, South Carolina, and died unexpectedly at his room in the Hotel Roosevelt in Jacksonville on June 20, 1937.

Soon after birth he with his family moved to Jacksonville, Florida, and later came to Tallahassee, where he was graduated from Leon County High School in 1914.

On February 3, 1921, he was married to Miss Frances M. Chambers, who survives him, together with two daughters, Marilyn and Hazel Anice. Other survivors are four sisters, Mrs. Norman Harper of Tallahassee, Miss Evelyn Davis of Tallahassee, Mrs. Kenneth Kimsey of Tallahassee, and Mrs. Emmett White of Albuquerque, New Mexico, and one aunt, Mrs. J. L. Lusby of Baltimore, Maryland.

On November 4, 1914, at the age of twenty, he passed the Florida Bar Examination and was admitted to the practice of law by court order for the removal of minority disability.

He was appointed Assistant United States Attorney for the Northern District of Florida in 1917. He was Prosecuting Attorney for Wakulla County from 1919 to 1925 and Prosecuting Attorney for Leon County from 1919 to 1921. He was General Counsel for the State Railroad Commission from 1925 to 1927.

Fred Henry Davis was a World War Veteran, having enlisted for the duration of the war on July 30, 1918. He was commissioned Second Lieutenant in 1918, Central Machine Gun Officers' Training School. On June 26, 1924, he enlisted in Company M, Florida National Guard; commissioned First Lieutenant July 7, 1924; commissioned Captain and Commanding Officer February 1, 1927; commissioned Major in Florida National Guard April 8, 1929, which commission he held at the time of death.

He was nominated and elected without opposition to the Florida House of Representatives from Leon County in the primaries and elections of 1920, 1922, 1924, and 1926, and was unanimously elected Speaker of the House of Representatives for the Session of 1927.

On June 4, 1927, he was appointed Attorney General to fill out an unexpired term and was elected in 1928 to a full four-year term as Attorney General. On March 9, 1931, at the age of thirty-six, he was appointed Associate Justice of the Florida Supreme Court and in 1932 was nominated and elected for the unexpired term of a retiring justice and was nominated and elected for a full six-year term as Supreme



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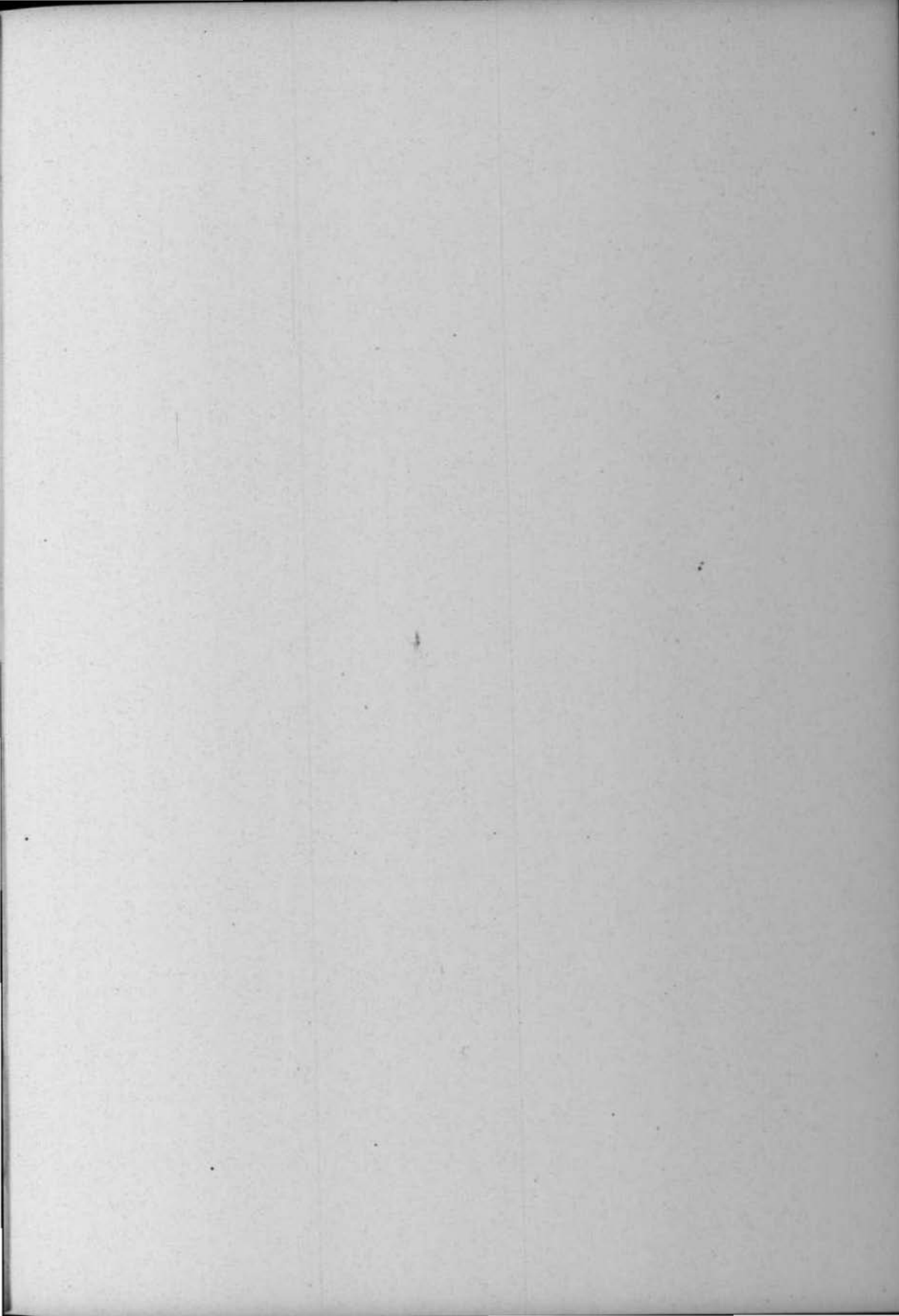
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Court Justice in 1934, and was elected by his fellow justices to be Chief Justice of the Florida Supreme Court in January, 1935.

He was Commander of Claude L. Sauls Post, American Legion, 1923; President of Tallahassee Lion's Club, 1935; Master Jackson Lodge No. 1, F and A M, 1922; High Priest Florida Chapter No. 1, R A M, 1926; Commander of St. Omer Commandery No. 12, Knights Templar, 1932; member of the Shrine; Noble Grand Leon Lodge No. 5, I O O F, 1919; member, Board of Stewards, Trinity Methodist Church, 1930 to 1933; member, Phi Alpha Delta, honorary legal fraternity; member, Elks Lodge; member, Sons of Confederate Veterans; and member, Florida Bar Association and American Bar Association.

Fred Henry Davis lived a busy life, yet he was never too busy to see a friend and render assistance when needed. He was admired and respected for his kindly manner and his unusual ability. During his service as a member of the Florida House of Representatives both proponents and opponents of measures before the House frequently sought and accepted his legal opinions with reference to such measures.

All who knew Fred Henry Davis will hold him in memory as a man of activity, ability, honor and integrity. In his death the State lost one of its noblest sons and one of its most revered and able and conscientious officials.



IN MEMORIAM

CARY D. LANDIS

Born—Claypool, Indiana, May 10, 1873.

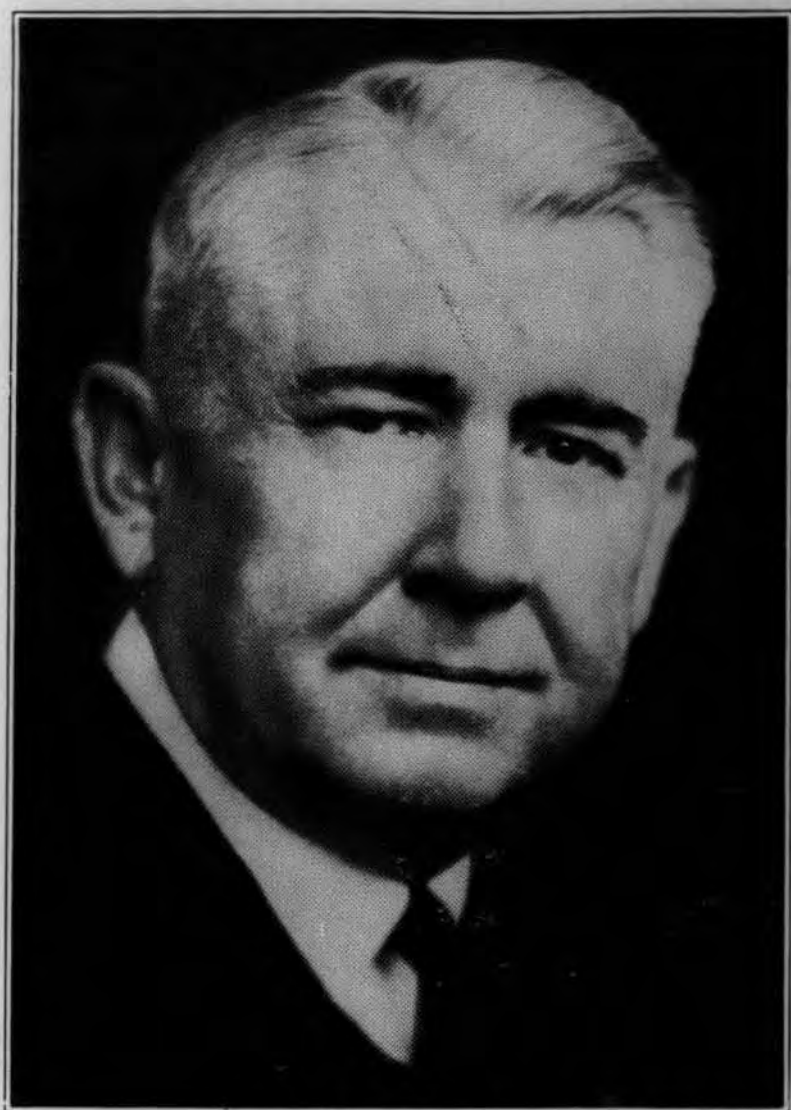
Died—Tallahassee, Florida, May 10, 1938.

Cary D. Landis, of DeLand, Florida, was born in Claypool, Indiana, May 10, 1873, and died on his sixty-fifth birthday at Tallahassee, Florida, while serving his third term as Attorney General of the State of Florida. Interment was made in the family burial plot in Ball Hill Cemetery near the Town of Flora, in his native State of Indiana.

Born on the farm, Attorney General Landis spent his boyhood days engaged in helping his father in farming operations. He early determined, however, to make his life work the practice of the profession of law, and his love for such profession went with him throughout his life. He received his early education in the elementary and high schools of North Manchester, Indiana, his college education at North Manchester College, the Indiana State Normal School, at Terre Haute, and his legal education at the University of Michigan, from which latter institution he received his Law Degree in 1899. Prior to his attendance at the University of Michigan, he was teacher, principal and superintendent in several Indiana High Schools, in 1891-92 being principal of the High School at Silver Lake, Indiana, in 1892-93 Principal of the Flora Indiana High School, and in 1894-96 Superintendent of Schools at Burlington, Indiana.

Four years prior to his graduation from the University of Michigan, and on the 4th day of September, 1895, he married Miss Margaret L. Weaver, of Cutler, Indiana, and from this union there were born three children, Erskine W. Landis, Elizabeth Guenevere Landis and William David Landis. Surviving him, are his widow and son, Erskine W. Landis, his other two children having predeceased him.

Upon receiving his Law Degree, he took up the practice of law in Huntington, Indiana, and there, as throughout his life, was active in the Democratic Party political movements of the day, becoming Chairman of the Democratic County Executive Committee and later Chairman of the Congressional Committee. While in Huntington he occupied the Bench as Special Judge, until in August of 1901, when he resigned to come to DeLand, Florida, to aid one of his former law teachers, Dean Farrah, in establishing a Law School at John B. Stetson University, at DeLand. After the Law School was established, and in 1903, he resigned his Professorship and became engaged in the practice of law at DeLand, continuing in the active practice until 1927 when he retired. His law firm, first known as Landis & Fish, later Landis, Fish & Hull, and later Landis, Fish, Hull & Whitehair, of which latter firm his son, Erskine, was a member, enjoyed one of the largest practices in the State of



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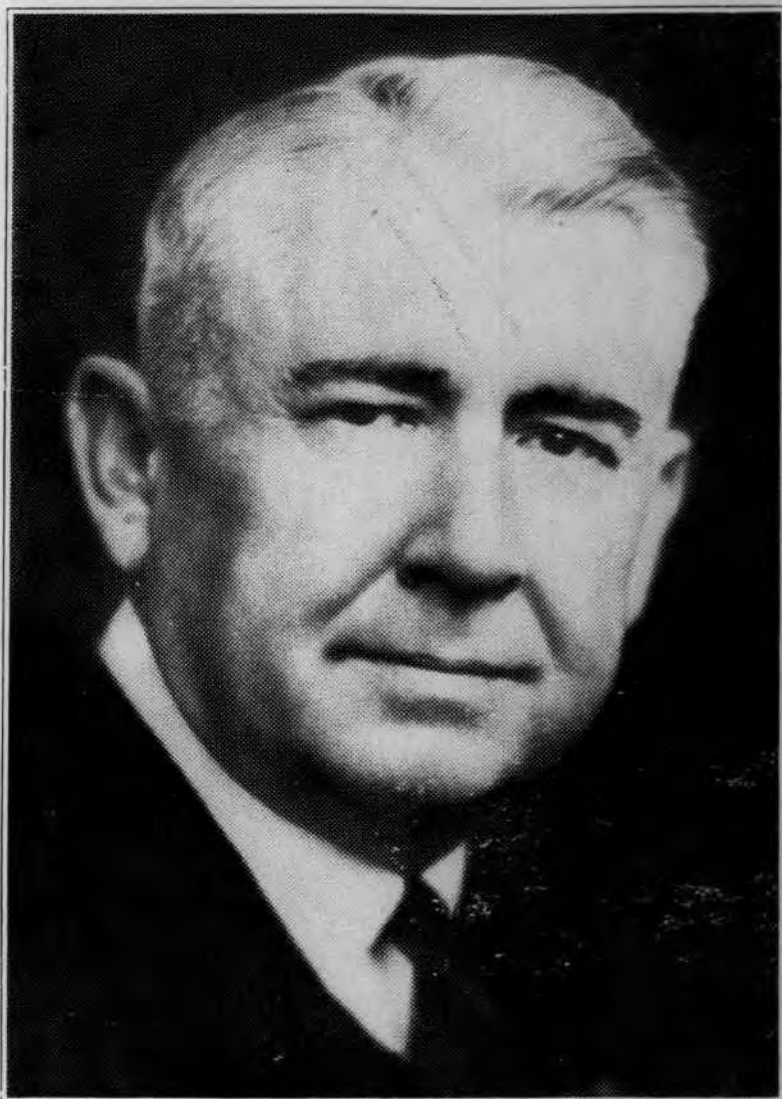
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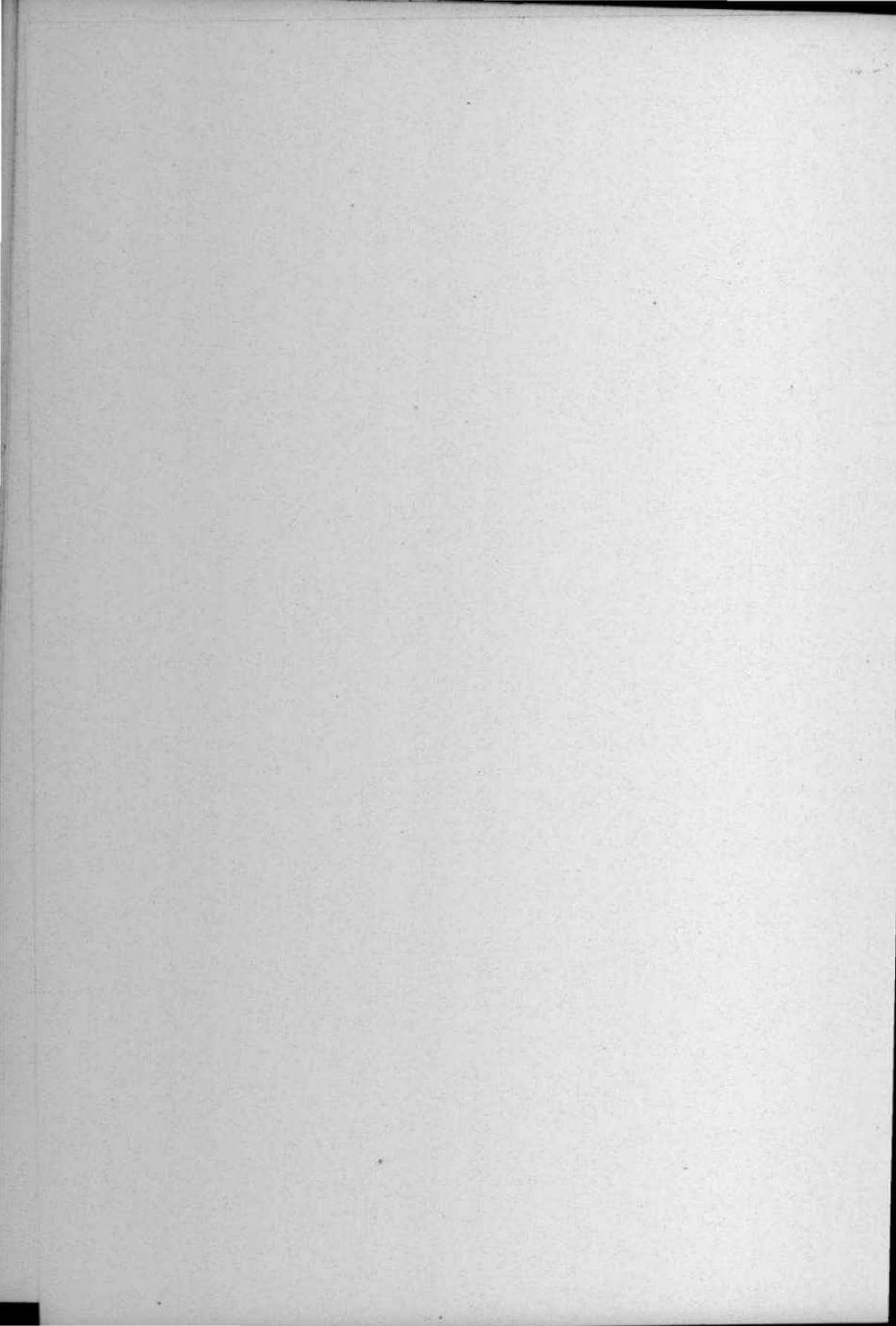
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CARY D. LANDIS



Florida, and its enviable reputation extended beyond the State's borders. During his active practice, he was State Attorney for the then Seventh Judicial Circuit of Florida, having been elected to such office by carrying every County in such Circuit, and holding such office from 1911 until 1913, when he resigned.

Attorney General Landis' life was an active one. He was a Presbyterian, a Thirty-second Degree Mason, a Shriner, an Elk, a Kiwanian, a Charter member of the DeLand Chamber of Commerce, organizer and President for one year of the East Coast State Bank, of Daytona Beach, from which position he resigned because of increased demands of his law practice, and at the time of his death Vice-President of the National Association of Attorneys General. He was a masterful orator and was continually in demand to address public gatherings. After making extensive travels in South America and Europe, after his retirement from active practice in 1927, he found that he could not become inactive, and feeling, as he often said, that Florida had been good to him, he became active in the politics of the State and in espousing the principles of the Democratic Party.

In 1931, he was appointed by Governor Doyle E. Carlton to the position of Attorney General. In 1932, he was elected for a full term without opposition, and again, in 1936, re-elected for another full term. He gave of everything that was in him while he occupied such office for the good of his adopted State. He was a man of sterling character, extreme loyalty, honest, courageous, aggressive and fearless. On his passing, the Supreme Court of the State spread on its minutes an expression of regret, saying: "A great public servant and a fine gentleman has passed from our midst; one whose services to the people of Florida in a Position of highest importance and distinction has endeared him to the people and has made his record of public service one that will be remembered for its ability and usefulness."

IV.
JUDICIAL DEPARTMENT OF FLORIDA
SUPREME COURT JUSTICES

TALLAHASSEE

JANUARY

1939

DIVISION A

Hon. GLENN TERRELL, Chief Justice,
Hon. RIVERS BUFORD,
Hon. ELLYN THOMAS.

DIVISION B

Hon. JAMES B. WHITFIELD, Presiding Justice,
Hon. ARMSTEAD BROWN,
Hon. R. H. CHAPMAN.

Hon. G. T. WHITFIELD, Clerk Supreme Court.
Hon. GEORGE COUPER GIBBS, Attorney General.
Hon. T. T. TURNBULL, Attorney for State Railroad Commission.
Hon. RICHARD P. DANIEL, Attorney for State Road Department.

CIRCUIT COURT JUDGES

FIRST CIRCUIT	Hon. ANGUS G. CAMPBELL, DeFuniak Springs. Hon. L. L. FABISINSKI, Pensacola.
SECOND CIRCUIT	Hon. E. C. LOVE, Quincy. Hon. J. B. JOHNSON, Tallahassee.
THIRD CIRCUIT	Hon. R. H. ROWE, Madison. Hon. HAL W. ADAMS, Mayo.
FOURTH CIRCUIT	Hon. DeWITT T. GRAY, Jacksonville. Hon. BAYARD B. SHIELDS, Jacksonville. Hon. A. D. McNEIL, Jacksonville.
DUVAL CIRCUIT	Hon. MILES W. LEWIS, Jacksonville.
FIFTH CIRCUIT	Hon. J. C. B. KOONCE, Tavares. Hon. FRED L. STRINGER, Brooksville.
SIXTH CIRCUIT	Hon. JOHN U. BIRD, Clearwater. Hon. T. FRANK HOBSON, St. Petersburg. Hon. JOHN I. VINEY, St. Petersburg.
SEVENTH CIRCUIT	Hon. GEO. W. JACKSON, St. Augustine. Hon. HERBERT B. FREDERICK, Daytona Beach.
EIGHTH CIRCUIT	Hon. H. L. SEBRING, GAINESVILLE. Hon. A. Z. ADKINS, Gainesville.

NINTH CIRCUIT	Hon. M. B. SMITH, Titusville.
	Hon. ALTO ADAMS, Ft. Pierce.
	Hon. FRANK A. SMITH, Orlando.
TENTH CIRCUIT	Hon. H. C. PETTEWAY, Lakeland.
	Hon. W. J. BARKER, Bartow.
ELEVENTH CIRCUIT	Hon. W. W. TRAMELL, Miami.
	Hon. PAUL D. BARNES, Miami.
	Hon. H. F. ATKINSON, Miami.
	Hon. ARTHUR GOMEZ, Key West.
TWELFTH CIRCUIT	Hon. GEO. W. WHITEHURST, Ft. Myers.
	Hon. W. T. HARRISON, Palmetto.
THIRTEENTH CIRCUIT	Hon. L. L. PARKS, Tampa.
	Hon. HARRY N. SANDLER, Tampa.
FOURTEENTH CIRCUIT	Hon. IRA A. HUTCHINSON, Panama City.
	Hon. E. C. WELCH, Marianna.
FIFTEENTH CIRCUIT	Hon. C. E. CHILLINGWORTH, West Palm Beach.
	Hon. GEO. W. TEDDER, Ft. Lauderdale.

CIVIL COURT OF RECORD JUDGES

DADE COUNTY	Hon. DAVID J. HEFFERMAN, Miami.
	Hon. ROSS WILLIAMS, Miami.
DUVAL COUNTY	Hon. BURTON BARRS, Jacksonville.

COURT OF CRIMES JUDGE

DADE COUNTY	Hon. WAYNE ALLEN, Miami.
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COURT OF RECORD JUDGE

ESCAMBIA COUNTY	Hon. R. POPE REESE, Pensacola.
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CRIMINAL COURT OF RECORD JUDGES

DADE COUNTY	Hon. BEN C. WILLARD, Miami.
DUVAL COUNTY	Hon. WILLIAM J. PORTER, Jacksonville.
HILLSBOROUGH COUNTY	Hon. JOHN R. HIMES, Tampa.
MONROE COUNTY	Hon. WM. V. ALBURY, Key West.
ORANGE COUNTY	Hon. W. M. MURPHY, Orlando.
PALM BEACH COUNTY	Hon. JOHN L. MOORE, West Palm Beach.
POLK COUNTY	Hon. ROBERT T. DEWELL, Haines City.

JUVENILE COURT JUDGES

BREVARD COUNTY	Hon. ALBERT M. BOLAND, Titusville.
DADE COUNTY	Hon. WALTER H. BECKHAM, Miami.
DUVAL COUNTY	Hon. W. S. CRISWELL, Jacksonville.

HILLSBOROUGH COUNTY	Hon. THOMAS B. CASTIGLIA, Tampa.
MONROE COUNTY	Hon. JULIETTE RUSSELL, Key West.
ORANGE COUNTY	Hon. MARTHA E. GORE, Orlando.
PINELLAS COUNTY	Hon. S. D. HARRIS, St. Petersburg.

STATE ATTORNEYS

FIRST CIRCUIT	Hon. E. DIXIE BEGGS, JR., Pensacola.
SECOND CIRCUIT	Hon. O. C. PARKER, JR., Tallahassee.
THIRD CIRCUIT	Hon. A. K. BLACK, Lake City.
FOURTH CIRCUIT	Hon. WILLIAM A. HALLOWES, III, Jacksonville.
FIFTH CIRCUIT	Hon. J. W. HUNTER, Tavares.
SIXTH CIRCUIT	Hon. CHESTER B. McMULLEN, Clearwater.
SEVENTH CIRCUIT	Hon. MURRAY SAMS DeLand.
EIGHT CIRCUIT	Hon. J. C. ADKINS, Gainesville.
NINTH CIRCUIT	Hon. MURRAY W. OVERSTREET, Kissimmee.
TENTH CIRCUIT	Hon. L. GRADY BURTON, Wauchula.
ELEVENTH CIRCUIT	Hon. G. A. WORLEY, Miami.
TWELFTH CIRCUIT	Hon. ROY D. STUBBS, Ft. Myers.
THIRTEENTH CIRCUIT	Hon. REX FARRIOR, Tampa.
FOURTEENTH CIRCUIT	Hon. JOHN H. CARTER, Marianna.
FIFTEENTH CIRCUIT	Hon. LOUIS F. MAIRE, Ft. Lauderdale.

SOLICITORS

CRIMINAL COURTS OF RECORD AND
COURT OF RECORD

DADE COUNTY	Hon. ROBERT R. TAYLOR, Miami.
DUVAL COUNTY	Hon. L. D. HOWELL, Jacksonville.
ESCAMBIA COUNTY	Hon. FORSYTH CARO, Pensacola.
HILLSBOROUGH COUNTY	Hon. JOSEPH E. WILLIAMS, Tampa.
MONROE COUNTY	Hon. ALLEN B. CLEARS, Key West.
ORANGE COUNTY	Hon. O. RAYMOND ELLARS, Orlando.
PALM BEACH COUNTY	Hon. W. E. ROEBUCK, West Palm Beach.
POLK COUNTY	Hon. MANUEL E. GLOVER, Bartow.

V.

CIRCUIT COURT CALENDAR

FIRST JUDICIAL CIRCUIT

JUDGES	Angus G. Campbell, DeFuniak Springs. L. L. Fabisinski, Pensacola.
State Attorney	E. Dixie Beggs, Jr., Pensacola.
Court Reporter	Julian McKinnon, DeFuniak Springs.

Winter Term

Walton	2nd Monday in January.
Santa Rosa	2nd Monday after 2nd Monday in January.
Escambia	2nd Monday in February.
Okaloosa	2nd Monday in December.

Spring Term

Walton	2nd Monday in May.
Santa Rosa	2nd Monday after 2nd Monday in May.
Escambia	2nd Monday in June.
Okaloosa	Last Monday in April.

Fall Term

Walton	2nd Monday in September.
Santa Rosa	2nd Monday after 2nd Monday in September.
Escambia	2nd Monday in October.
Okaloosa	Last Monday in August.

SECOND JUDICIAL CIRCUIT

JUDGES	E. C. Love, Quincy. J. B. Johnson, Tallahassee.
State Attorney	O. C. Parker, Jr., Tallahassee.
Court Reporter	John H. Patterson, Jr., Tallahassee.

Spring Term

Franklin	3rd Monday in March.
Liberty	1st Monday in April.
Gadsden	1st Monday in March.
Wakulla	3rd Monday in April.
Jefferson	1st Monday in May.
Leon	3rd Monday in May.

Fall Term

Franklin	3rd Monday in September.
Liberty	1st Monday in October.
Gadsden	3rd Monday in October.
Wakulla	1st Monday in November.
Jefferson	3rd Monday in November.
Leon	1st Monday in December.

THIRD JUDICIAL CIRCUIT

JUDGES	R. H. Rowe, Madison. Hal W. Adams, Mayo.
State Attorney	A. K. Black, Lake City.
Assistant State Attorney	O. O. Edwards, Cross City.
Court Reporter	Gussie Miller, Lake City.

Spring Term

Hamilton	4th Monday in January.
Dixie	3rd Monday in February.
Taylor	4th Monday in March.
Madison	2nd Monday in April.
Columbia	4th Monday in April.
Suwannee	2nd Monday in May.
LaFayette	2nd Monday in June.

Fall Term

Hamilton	2nd Monday in September.
Dixie	2nd Monday in August.
Taylor	4th Monday in September.
Madison	2nd Monday in October.
Columbia	4th Monday in October.
Suwannee	2nd Monday in November.
LaFayette	1st Monday in December.

FOURTH JUDICIAL CIRCUIT

JUDGES	Miles W. Lewis (Duval Circuit) Jacksonville. DeWitt T. Gray, Jacksonville. Bayard B. Shields, Jacksonville. A. D. McNeill, Jacksonville.
State Attorney	William A. Hallows III, Jacksonville.
Assistant State Attorney	James H. Bunch, Jacksonville.
Court Reporter	Ralph W. Pattison, Jacksonville.

Spring Term

Clay	1st Tuesday after 1st Monday in April.
Nassau	3rd Monday in April.
Duval	3rd Monday in May.

Fall Term

Clay	2nd Monday in October.
Nassau	4th Monday in October.
Duval	4th Monday in November.

FIFTH JUDICIAL CIRCUIT

JUDGES	J. C. B. Koonce, Tavares. Fred L. Stringer, Brooksville (Judge Old 24th).
State Attorney	J. W. Hunter, Tavares.
Assistant State Attorney	James M. Smith, Jr., Ocala.
Court Reporters	Jeff Wood, Leesburg. Ruth Murphy, Brooksville.

Spring Term

Hernando	1st Tuesday in March.
Citrus	4th Tuesday in March.
Sumter	1st Tuesday in June.
Lake	1st Tuesday in May.
Marion	1st Tuesday in April.

Fall Term

Hernando	1st Tuesday in September.
Citrus	4th Tuesday in September.
Sumter	1st Tuesday in December.
Lake	1st Tuesday in November.
Marion	1st Tuesday in October.

SIXTH JUDICIAL CIRCUIT

JUDGES	John U. Bird, Clearwater. T. Frank Hobson, St. Petersburg. John I. Viney, St. Petersburg.
State Attorney	Chester B. McMullen, Clearwater.
Assistant State Attorney	Arthur L. Auvil, Dade City.
Court Reporter	B. E. Satterfield, Clearwater.

Spring Term

Pinellas	1st Monday in May.
Pasco	1st Tuesday in April.

Levy	3rd Monday in October.
Union	3rd Monday in November.

Summer Term

Alachua	2nd Monday in July.
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Winter Term

Alachua	2nd Monday in January.
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NINTH JUDICIAL CIRCUIT

JUDGES	M. B. Smith, Titusville.
	Alto Adams, Ft. Pierce.
	Frank A. Smith, Orlando.
State Attorney	Murray W. Overstreet, Kissimmee.
Assistant State Attorneys	Lloyd F. Boyle, Sanford.
	Angus Summer, Ft. Pierce.
Court Reporters	E. E. Sanders, Ft. Pierce.
	Jessie D. Kleinman, Titusville.

Spring Term

Seminole	1st Tuesday in February.
Orange	3rd Monday in April.
Osceola	3rd Monday in March.
Indian River	2nd Tuesday in March.
St. Lucie	2nd Tuesday in April.
Okeechobee	2nd Tuesday in February.
Martin	2nd Tuesday in June.
Brevard	4th Tuesday in March.

Fall Term

Seminole	2nd Tuesday in November.
Orange	3rd Monday in October.
Osceola	3rd Monday in September.
Indian River	2nd Tuesday in October.
St. Lucie	2nd Tuesday in November.
Okeechobee	2nd Tuesday in September.
Martin	2nd Tuesday in January.
Brevard	2nd Tuesday in October.

TENTH JUDICIAL CIRCUIT

JUDGES	H. C. Petteway, Lakeland.
	W. J. Barker, Bartow.
State Attorney	L. Grady Burton, Wauchula.

Spring Term

Glades	1st Monday in February.
DeSoto	2nd Monday in February.
Hendry	3rd Monday in February.
Collier	1st Monday in March.
Manatee	2nd Monday in March.
Charlotte	4th Monday in March.
Sarasota	1st Monday in April.
Lee	3rd Monday in April.

Fall Term

Glades	1st Monday in September.
DeSoto	2nd Monday in September.
Hendry	3rd Monday in September.
Collier	1st Monday in October.
Manatee	3rd Monday in October.
Charlotte	4th Monday in October.
Sarasota	2nd Monday in November.
Lee	1st Monday in November.

THIRTEENTH JUDICIAL CIRCUIT

JUDGES	L. L. Parks, Tampa.
	Harry N. Sandler, Tampa.
State Attorney	J. Rex Farrior, Tampa.
Assistant State Attorney	J. Frank Umstot, Tampa.
Court Reporter	Robert F. Johnson, Tampa.

Spring Term

Hillsborough	1st Tuesday in April.
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Fall Term

Hillsborough	1st Tuesday in October.
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FOURTEENTH JUDICIAL CIRCUIT

JUDGES	Ira A. Hutchison, Panama City.
	E. C. Welch, Marianna.
State Attorney	John H. Carter, Jr., Marianna.
Assistant State Attorney	L. D. McRae, Chipley.
Court Reporters	O. C. Speight, Chipley.
	Mrs. Zola Folkes, Panama City.

Spring Term

Gulf	4th Monday in February.
Calhoun	4th Monday in April.
Jackson	2nd Monday in May.
Bay	2nd Monday in March.
Washington	4th Monday in March.
Holmes	2nd Monday in April.

Fall Term

Gulf	4th Monday in August.
Calhoun	4th Monday in September.
Jackson	2nd Monday in November.
Bay	2nd Monday in September.
Washington	4th Monday in October.
Holmes	2nd Monday in October.

**FIFTEENTH JUDICIAL CIRCUIT**

JUDGES	C. E. Chillingworth, West Palm Beach. Geo. W. Tedder, Ft. Lauderdale.
State Attorney	Louis F. Maire, Ft. Lauderdale.
Assistant State Attorney	Phil O'Connell, West Palm Beach.
Court Reporters	J. W. Coleman, Ft. Lauderdale. Alice M. Hayden, West Palm Beach.

Spring Term

Palm Beach	1st Tuesday after 1st Monday in January and March.
Broward	2nd Tuesday in March.

Fall Term

Palm Beach	1st Tuesday after the 1st Monday in June and October.
Broward	2nd Tuesday in October.

VI.

COUNTIES, COUNTY SEATS AND COUNTY OFFICERS

COUNTY	COUNTY SEAT	CLERK OF CIR. CT. COURT	COUNTY JUDGE	SHERIFF	TAX ASSESSOR	TAX COLLECTOR	SUPERVISOR OF REGISTRATION
Alachua	Gainesville	Geo. E. Evans	R. D. Hiers	J. P. Ramsey	John W. Booth	J. L. Arnow	Miss Sue Simpson
Baker	Mecleny	J. A. Burnett	Frank Dowling	S. R. Green	B. F. Jones	Geo. P. Williams	Wesley Moody
Bay	Panama City	H. A. Pleiger	C. S. Russ	John Scott	D. G. Mc Juagge	A. G. Applebourg	J. B. Mashburn
Brevard	Stark	A. J. Thomas	E. K. Perryman	A. O. An reu	E. W. Hayes	C. A. Knight	N. D. Wainwright
Broward	Titusville	G. M. Simmons	L. B. Newman	H. T. Williams	P. H. Wright	H. C. Morgan	W. J. Bailey
Calhoun	Ft. Lauderdale	E. R. Bennett	Boyd H. Anderson	Walter R. Clark	L. O. Hansen	W. O. Berryhill	Easter L. Gates
Charlotte	Blomington	J. A. Peacock	Roy S. Gascia	J. K. Misgrove	C. T. Traylor	J. R. Richards	Lee Bailey
Chloris	Punta Gorda	E. H. Scott	W. R. Roberts	J. H. Liscomb	A. C. Jordan	E. B. Yeager	Mrs. L. V. King
Clay	Inverness	James E. Connor	E. C. May	Chas. S. Dean	Frank Ellison	A. S. King	Gordon Cooper
Collier	Green Cove Spring	L. T. Ivey	J. T. Jennings, Jr.	J. P. Hall	Claude Smith	C. L. Saunders	R. R. Dyal
Columbia	Everglades	Ed. Scott	S. S. Jolly	L. J. Thorpe	D. W. McLeod	C. H. Collier	E. H. Berry
Dade	Lake City	H. B. Summers	W. B. Brannon	W. W. Davis	Mrs. E. R. Hale	A. B. McDuffie	F. L. Johnson
De Soto	Miami	E. B. Leatherman	W. F. Blanton	D. C. Coleman	J. N. Lumsden, Jr.	Hayes Wood	Carl Holmer, Jr.
Dixie	Area 1a	Mrs. Mary M. Gwynn	L. E. Purvis	J. E. Albritton	Kate Carlton	W. M. Noland	Sallie Ivey
Duval	Cross City	L. L. Curtis	L. G. Gunter	F. L. Anderson	J. I. Taylor	J. R. Roberts	Ed. Butler
Escambia	Jacksonville	Elliot W. Butts	Oliver Edmunds	Rex Sweat	Al St. John	C. H. Simrson	Emory Price
Flagler	Pensacola	Langley Bell	Harvey E. Page	H. E. Gandy	W. J. McDavil	T. T. Wentworth, Jr.	Ben Davis
Franklin	Bunnell	Dale B. Brown	H. A. Eisenbach	E. W. Johnson	D. D. Moody	J. F. Mercer	Miss Ellie Barber
Gadsden	Apalachicola	W. P. Dodd	Wm. Sawyer	C. L. Robbins	Mrs. Eleanor Floyd	Harry Sawyer	Miss Clyde Brown
Gilchrist	Quincy	P. F. Morgan	E. M. Dyal	W. M. Inman	R. L. Green	Mrs. J. M. Rowan	E. O. Hall
Gulf	Trenton	H. E. Hirtlee	M. G. Akins	R. E. Davis	H. V. Miller	M. E. Whitty	W. J. Lord
Hamilton	Moore Haven	Mrs. D. S. Weeks	J. M. Coase	J. J. Wiggins	I. E. Scott	J. P. Moore	Miss Dorothy Peoples
Hardee	Wewahatcha	J. R. H. Inter	R. A. Denly	B. E. Parker	S. A. Patrick	Ed. C. Priggen, Sr.	C. G. Rich
Hendry	Jasper	Miss Thelma Lewis	B. B. Johnson	A. F. Hancock	B. F. Leigh	M. W. Wetherington	Mrs. Lena Carpenter
Hernando	Wauchula	R. C. Simmons	Clyde Maddox	W. B. Whidden	Mahy Carlton	L. J. Carlton	T. E. Blacburn
Highland	LaBelle	Wm. T. Hall	W. T. Maddox	H. L. DeLaney	Dennis Small	F. A. Dougherty	John L. Hall
Hillsborough	Brooksville	H. C. Mierler	E. S. MacKenzie	Neil F. Law	F. E. Saxon	J. T. Daniel	Mrs. Lillie Sewell
Holmes	Sebring	W. Z. Carson	T. A. McNicholas	Doyle Schumacher	P. G. Gearing	Ruth B. Hylton	H. T. Piety
Inman	Tamra	Myrtle Culbreath	G. H. Cornelius	J. R. McLeod	W. S. Sparkman	J. M. Burnett	John C. Dekle
Jackson	Honolulu	H. D. Howell	T. L. Belser	Lon F. Brown	W. L. Slay	M. C. Bolten	I. P. Simmons
	Vero Beach	Douglas Baker	Otis M. Cobb	Wm. W. Frick	Wm. R. Duncan	T. E. Moody	G. T. Tiffin
	Marianna	H. A. Bowles	D. H. Oswald	W. L. Watford	Luther Duncan	Leo Sims	Miss Pansy Durden

COUNTIES, COUNTY SEATS AND COUNTY OFFICERS—(Continued)

COUNTY	COUNTY SEAT	CLERK OF CIRCUIT COURT	COUNTY JUDGE	SHERIFF	TAX ASSESSOR	TAX COLLECTOR	SUPERVISOR OF REGISTRATION
Jefferson	Monticello	Clyde H. Sauls	T. B. Bird	A. S. Grant	S. C. Walker	R. J. Taylor	Mrs. Henry Wheeler
Lafayette	Mayo	S. C. Edwards	Geo. W. Breare	J. C. Sessions	T. J. Sims	F. M. Green	M. C. Golden
Lake	Tavares	Geo. J. Dykes	A. S. Herlong, Jr.	B. A. Cassady	J. P. Doss	B. A. Williams	Mrs. M. E. Miller
Lee	Ft. Myers	Father Draughton	David E. Ward	Bob King	J. M. Boring	R. V. Lee	Mrs. Tattle Smith
Leon	Tallahassee	Paul V. Lang	W. May Water	Frank Stotamine	W. A. Bass	W. K. Collins	Hattie L. Coles
Levy	Bronson	Jack L. Meets	W. F. Anderson	W. B. Wheldon	T. F. McCall	M. D. Graham	Mrs. P. N. King
Liberty	Bristol	W. G. Larkins	R. W. Robertson	O. M. Revell	R. H. Deason	Mary A. Roberts	Eva Ba'ter
Madison	Madison	D. F. Burnett, Jr.	J. W. Kinsey	Loune T. Davis	A. H. Armstrong	Joe Hill Smith	A. E. Ragans
Manatee	Bra'enton	Iverson Lloyd	S. J. Murphy	C. J. Hatches	J. A. Howze	R. B. Johnson	Lindell Shriver
Marion	Seala	Carlyle Ausley	L. E. Futeh	G. Moorhead	J. E. Thomas	L. R. Bracken	N. C. Perkins
Martin	Stuart	J. R. Pomeroy	E. J. Smith, Jr.	C. E. Christensen	A. C. Coleson	L. C. Kitcher	J. P. Blacklee
Monroe	Key West	Rosa C. Sawyer	R. R. Lord	K. O. Thompson	V. O. Kirchheimer	F. H. Ladd	J. B. England
Nassau	Fernandina	G. C. Burgess	H. V. Burgess	A. J. Higginbotham	S. H. Swearingen	L. A. Klarer	John J. Cone
Okaloosa	Crestview	M. B. Barrow	W. F. Osburn	J. P. Steel	Johnnie Vaughn	C. L. Can'bell	I. S. Bolea
Okeechobee	Okeechobee	J. L. Barber	T. W. Conley, Jr.	C. C. Simmons	Robt. LaMartin	Bessie Allerman	W. B. Hargrave
Orange	Orlando	C. M. Gay	Victor H. Hethins	Frank Karel	Arthur Butts	C. M. McKenney	R. T. Tuer
Oscola	Kissimmee	J. L. Overstreet	J. F. Robinson	Young Tindall	Glenn Ray	C. L. Branly	Sam Brannan
Palm Beach	West Palm Beach	Geo. O. Butler	R. P. Robbins	H. W. Lawrence	J. M. Owens, Jr.	S. O. Sorrell	J. L. Grier
Pasco	Dade City	A. J. Burnslee	O. L. Davton, Jr.	O. A. Allen	J. Ed. Ryant	H. G. Batchelor	Mrs. L. R. Wells
Pinellas	Clearwater	Ray E. Green	Jack P. White	E. G. Cunningham	C. A. Wiley	J. B. Starkey	W. C. Reil
Polk	Bartow	D. H. Sloan, Jr.	C. M. Whiggins	W. W. Chase	J. B. White	P. M. H. Johnson	High E. Carlton
Putnam	Palatka	W. A. Williams, Jr.	C. S. Green	R. J. Hancock	E. W. Watkins	Randell Wells	W. M. Williams
St. Johns	St. Augustine	Hiram Faver	C. C. Mathis, Jr.	E. E. Boyce	S. C. Middleton	J. R. H. Miller	Mrs. T. F. Ellzey
St. Lucie	Ft. Pierce	W. R. Lott	Flem C. Dame	B. A. Brown	E. R. Pierce	Orris Nobles	N. H. Ballard
Santa Rosa	Milton	G. H. Leonard	A. L. Johnson	J. T. Allen	Eugene Glover	E. L. Lewis	R. G. Gibson
Sarasota	Sarasota	J. R. Peacock	Forrest Chapman	C. B. Pearson	J. P. Gaines	C. G. Strohmeier	W. T. Dixon
Seminole	Sanford	O. P. Harnon	R. W. Ware	C. M. Hall	S. F. Dornley	J. D. Jenkins	W. J. Thigpen
Sumter	Bushnell	Roy Caruthers	J. M. Eaddy	W. T. Coleman	Imman Wheeler	Grady Potter	S. N. Graham, Sr.
Suwannee	Live Oak	J. L. McMullen	M. H. Paggett	P. B. Cannon	F. M. Green	M. M. Foxworthy	D. A. Bonnell
Taylor	Perry	J. R. Jackson	Byron N. Butler	S. L. Wilson	A. E. Morgan	Alton C. Henry	Mrs. Daw Vereen
Union	La'ce Butler	C. B. Hayes	J. R. Townsend	W. S. Brannen, Jr.	J. D. Knight	Ury G. Samp	Mrs. D. O. Epperson
Volusia	DeLand	I. W. Hawkins	J. E. Peacock	S. E. Stone	Homer S. Smith	Cornelia S. Paul	O. G. Sage
Wakulla	Crawfordville	L. L. Pararo	A. L. Porter	E. C. Ferrell	J. H. Ashmore	W. G. Durrance	L. R. Harvey
Walton	DeFuniak	R. B. Underwood	L. H. Brannon	M. H. Prescott	D. G. Ray	W. T. Ray, ex officio	
Washington	Chipley	Leon R. Cox	A. D. Carmichael	John P. Harrell	Mrs. Elvie Yates	R. C. Fleming	S. D. Harman

VII.
LETTER OF TRANSMITTAL

STATE OF FLORIDA
ATTORNEY GENERAL'S OFFICE

Tallahassee, Florida, Jan. 1, 1939.

*To His Excellency, Honorable Fred P. Cone,
Governor of Florida:*

SIR:

As required by the constitutional mandate, directing each officer of the Executive Department to make full report of his official acts, of the receipts and expenditures of his office, and of the requirements of the same, to the Governor at regular periods, or whenever the Governor shall require it, and in compliance with such mandate, as well as in compliance with long established custom in this State by which such reports are made to cover the two calendar years immediately preceding each regular session of the Legislature, I have the honor to submit herewith the Report of this office, covering the period from January 1, 1937, to December 31, 1938.

Respectfully submitted,

GEORGE COUPER GIBBS,
Attorney General.

VIII.

GENERAL SCOPE OF DUTIES

The Attorney General is required by common law to exercise certain powers and perform a great variety of duties of great public importance in the due and proper administration of our State Government.

The constitutional duties of the Attorney General are prescribed by Section 22 of Article IV of the Constitution as follows:

"The Attorney General shall be the legal adviser of the Governor, and shall perform such other legal duties as may be prescribed by law. He shall be Reporter for the Supreme Court."

There are many statutes pertaining to the duties and powers of the Attorney General and relating to the conduct of the office and the following are quoted as information:

"The Attorney General shall reside at the seat of government, and shall keep his office in a room in the capitol; he shall perform the duties prescribed by the Constitution of this State, and also perform such other duties appropriate to his office, as may from time to time be required of him by law, or by resolution of the Legislature; he shall, on the written requisition of the Governor, Secretary of State, Treasurer, or Comptroller, give his official opinion and legal advice in writing on any matter touching their official duties; he shall appear in and attend to in behalf of the State, all suits or prosecutions, civil or criminal, or in equity, in which the State may be a party, or in any wise interested, in the Supreme Court of the State; he shall appear in and attend to such suits or prosecutions in any other of the courts of the State, or in any courts of any other State, or of the United States; he shall have and perform all powers and duties incident or usual to such office, and he shall make and keep in his office a record of all his official acts and proceedings, containing copies of all his official opinions reports and correspondence, and also keep and preserve in his office all official letters and communications to him, and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the Governor of the State, and to the disposition of the Legislature by act or resolution thereof." (Section 125, Comp. Laws, 1927.)

"In case of the disability of the Attorney General to perform any official duty devolving on him, by reason of interest or otherwise, the Governor or Attorney General of this State may appoint another person to perform such duty in his stead." (Section 126, Comp. Laws, 1927.)

"The Attorney General shall prepare marginal abstracts to the several sections and a general alphabetical index to the entire general acts and resolutions of each session of the Legislature as soon as practicable after the adjournment thereof, also an index to the local acts and an index to each of the journals of the two branches of the Legislature.

Such acts and resolutions and forms of proceedings thereunder prepared by the Attorney General shall be published under his direction." (Section 127, Comp. Laws, 1927.)

"It shall be the duty of the Attorney General at the convening of each session of the Legislature of this State, or as soon thereafter as possible, to recommend a person experienced in indexing, to supervise and assist the respective clerks of each branch of the Legislature having such work in hand, in making the index for both journals. His compensation shall be fixed by the Legislature as other attaches and he shall have as many days as the Legislature may designate by resolution after the close of each session for completing and presenting his work for approval by the Attorney General, who is authorized to approve such index if found correct, before the payment shall be made for the extra days allowed after the close of the Legislature." (Section 128, Comp. Laws, 1927.)

"It shall be the duty of the Attorney General to make a written report to the Governor five days before the first day of every session of the Legislature, as to the effect and operation of the acts of the last previous session, the decisions of the court thereon, and referring to the previous legislation on the subject, with such suggestions as in his opinion the public interest may demand, which report shall be laid before the Legislature by the Governor with his first message." (Section 129, Comp. Laws, 1927.)

"It shall be a misdemeanor in office for the Attorney General to take or receive any fee for defending any supposed offender in any of the courts." (Section 130, Comp. Laws, 1927.)

"The Attorney General shall exercise a general superintendence and direction over the several State Attorneys of the several circuits as to the manner of discharging their respective duties, and whenever requested by the State Attorneys, shall give them his opinion upon any question of law." (Section 131, Comp. Laws, 1927.)

"The Attorney General shall prescribe the time and manner in which regular quarterly reports shall be made to him by State Attorneys, and it shall be their duty to comply with his instructions in this respect." (Section 132, Comp. Laws, 1927.)

"The Clerk of the Supreme Court is hereby directed to deliver to the Attorney General a copy of each volume or part of volume of the decisions of the Supreme Court of Florida, which may be in the care or custody of said Clerk, and which the Attorney General's office may be without, and take the Attorney General's receipt for the same. The Attorney General shall keep the same in his office at the capitol, and each retiring Attorney General shall take the receipt of his successor for the same and file such receipt in the Treasurer's office: Provided, that this shall not authorize the taking away of any book belonging to the Supreme Court library, kept for the use of said Court." (Section 133, Comp. Laws, 1927.)

"The Attorney General is required to prepare and cause to be printed a sufficient number of copies of fee bills of the various officers of the

several counties of this State, and send, or cause to be sent, copies of said fee bills to all county officers in this State. Such officers shall keep posted in a conspicuous place in their office such fee bills, for the information of persons having business with them." (Section 4677, Comp. Laws, 1927.)

In addition to the duties embraced in the foregoing sections of the statutes, other provisions of law make it the duty of the Attorney General to approve the bond of the Comptroller (Sec. 140), of the Shell Fish Commissioner (Sec. 1844), prosecute combinations against Florida meats (Sec. 7076), and investigate and rectify commercial discriminations (Secs. 3940-3943), enjoin violations of the laws regulating commercial feeds stuffs (Sec. 3259), conduct condemnation proceedings on behalf of Board of Commissioners of State Institutions (Sec. 5105) and on behalf of the adjutant General's office for military purposes (Sec. 2054), approve article of incorporation for co-operative marketing associations (Sec. 6473), examine and pass on statements filed by investment companies (Sec. 5997), bring proceedings to forfeit charters of corporations which violate the laws or fail to comply with mandatory requirements of same (Sec. 7946), enforce the anti-trust laws of the State (Sec. 7946), pass upon revocation of licenses of investment companies (Sec. 6001), bring proceedings to annul franchise of corporations not for profit under certain conditions (Sec. 6505), approve title to real estate in which the State is interested (Sec. 2399), pass upon permits of associations doing business under a declaration of trust (Sec. 7093), represent the State in disbarment proceedings in the Supreme Court (Sec. 4176), pass upon and approve regulations of district drainage boards (Sec. 1494), certify Everglades Drainage District bonds (Sec. 1555), bring proceedings against fair associations for annulment of their charters when laws relating to same are violated (Sec. 6524), prepare and publish copies of opinions of the Supreme Court (Secs. 4713, 1983) and act as reporter for the Supreme Court (Sec. 4714), participate in hearings on prosecutions instituted against violators of pure food and drug laws (Sec. 3201), prepare forms for hunting licenses (Sec. 1898), furnish indexes to laws and journals of the Legislature (Sec. 1933), conduct proceedings against insolvent or defaulting insurance companies (Secs. 6202, 6228), conduct all quo warranto proceedings (Secs. 5446, 8162), act as attorney for the Railroad Commission (Secs. 6720, 6732, 6734, 6747, 6751) although this work is negligible because of a provision for the Railroad Commission to employ special counsel under Section 6732; attend all legal business arising in connection with the laws governing the salt water fishing industry (Sec. 1846), prepare bond of contractor for uniform school books (Secs. 860-861), pass upon legality of and give approval to all investments of school district sinking funds in purchases of bonds (Sec. 736), devise and furnish a form of seal for all the courts of the State (Sec. 4881), bring proceedings for annulment of franchises of social clubs under certain conditions (Sec. 6505), control and supervise acts of special assistants to the Attorney General who are not part of the Attorney General's office force, being directly responsible to and appointed by the Governor for special work (Secs. 134-

135); give special attention to legal proceedings in connection with the sponge fishing industry (Sec. 1886), conduct suits on bonds of State health officer (Sec. 3170), act as legal advisor and attorney for State Plant Board (Sec. 3833), act as legal advisor for State Road Department (Sec. 1639) which has, however, a special attorney who acts for it in ordinary cases; sue to recover fines for doing business without a license (Sec. 7450); conduct prosecutions against defaulting and delinquent surety companies (Sec. 6296, assist in fixing values of securities deposited with State Treasurer by trust companies under the Trust Act (Sec. 6131), enforcement of vital statistics law (Sec. 3293.)

"Chapter 14832, Laws of Florida, Acts of 1931, creating the State Racing Commission designates the Attorney General as the official attorney for such Commission," however Chapter 17276 acts 1935 empowers the commission to employ an attorney at salary not to exceed \$3000 per annum.

ADMINISTRATIVE DUTIES ON BOARDS

The Attorney General is required to perform a great variety of administrative duties as a member of various boards and he is called upon to answer numerous inquiries from State, County and Municipal officers as matters of information and as an aid to bring about uniformity of administration of the law.

The major part of the important business of the State is performed and handled by Boards and Commissions, created by the Constitution and Laws of the State, and this consumes much of the time of the State officials.

The Attorney General is a member of the following Boards and Commissions:

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS

This Board is composed of the Governor and his entire cabinet, which includes the Attorney General (Sec. 17, Art. IV, Constitution).

This Board has the management and control of all the State Institutions, which includes the Florida State Hospital, State Prison Farm, all State convicts, both the industrial School for Boys and the School for Girls and the Home for the Feeble Minded.

The control and management of these institutions places upon this Board innumerable and most important duties.

The Attorney General not only acts as a member of this Board but is also its legal advisor in the various legal and quasi legal questions arising in the management of these large and important institutions.

STATE BOARD OF EDUCATION

This Board is composed of the Governor, Secretary of State, Attorney General, State Treasurer and State Superintendent of Public Instruction. (See Sec. 12, Art. III, Const.)

Upon this Board is imposed the duty of taking charge of and handling all lands of the State held for educational purposes, also to conserve, manage and safely keep the educational funds of the State; and also many other duties in connection with the general education system of the State.

The Attorney General is the legal advisor of this Board, as well as member thereof.

By virtue of Chapter 7376, Acts of 1917, (Sec. 842, C. G. L.) the State Board of Education was created the State Vocational Board contemplated by Acts of Congress to co-operate with the Federal Board of Vocational Education in the administration of the Federal Act.

This Board designates the schools at which vocational education in agriculture, the trades and industries shall be taught and also sees to the administering of the provisions of this law.

STATE BOARD OF PARDONS

This Board is composed of the Governor, Secretary of State, Attorney General, Comptroller and Commissioner of Agriculture. (Sec. 12, Art. IV, Const.)

The Constitution gives this Board the power to remit fines and forfeitures, commute punishment, grant pardons in all cases except treason and impeachment.

With an average prison population now of about 3,041 for the year 1935, and 3,315 for the year 1936, it can readily be seen that there are many who feel the urge to apply for clemency of some form.

Two regular meetings of this Board are held each year and during the year 1936 there were 1,200 applications filed with and passed upon by the Board. Life, liberty, suffering and anxiety of the applicants, as well as dependents and society in general, are involved and of necessity careful consideration must be and is given each application, and this consumes a great deal of time of each member of the Board.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND AND STATE BOARD OF DRAINAGE COMMISSIONERS

These Boards are composed of the same officials, to-wit: The Governor, Attorney General, Comptroller, State Treasurer and Commissioner of Agriculture. (See Sec. 1385 and 1524, respectively, C. G. L.)

The Trustees of the Internal Improvement Fund hold title to and have the exclusive management and control of all lands belonging to the State which were acquired by Acts of Congress of March 3, 1845, and September 28, 1850, which at this time amounts to approximately 1,154,-167.95 acres of swamp and overflow land, 2,985.17 acres of Internal Improvement land proper, and an unknown quantity of land owned by the State under its right of sovereignty.

The Attorney General is Attorney and Counsel for this Board. The legal work by way of foreclosures, drafting, of contracts, advice to the Board, etc., is very large in volume, and practically consumes the entire time of one assistant and stenographer.

The law places upon the Board of Drainage Commissioners the duty of establishing a system of canals, drains, levees, dikes and reservoir to drain and reclaim the swamp and overflow lands within the drainage districts.

Much time is consumed by the members of these boards in carrying out the duties imposed upon them relative to the important matters involved.

STATE CANVASSING BOARD

This Board is composed of the Secretary of State, Comptroller and Attorney General. (Sec. 348, C. G. L.). The duties of this Board are to canvass the returns of all general elections for State officers.

FLORIDA SECURITIES COMMISSION

This Commission was created by Chapter 14899, Acts of 1913, Laws of Florida, and is composed of the Comptroller, Treasurer and Attorney General.

This Board is invested with the power of administering the act and enforcing its provision. The purpose of the act, is the protection, as far as possible, of the investing public in the purchase of securities. The duties of this Board require frequent meetings and consume considerable time in hearings and study and investigation of Domestic and Foreign Corporations, their assets, plans of operation, etc.

STATE BUDGET COMMISSION

This Commission is composed of the Governor, Secretary of State, Comptroller, Treasurer, Attorney General, Commissioner of Agriculture and State Superintendent of Public Instruction. (Sec. 1366, C. G. L., also Chap. 14654, Acts 1931.)

It is the duty of this Commission to make and assemble reports of their own departments and of all other bureaus, divisions, officers, com-

missions, institutions and other State agencies and thus prepare a State Budget to be submitted to the Legislature as a basis for the General Appropriation Bill. This work requires much careful thought and consideration and consumes quite considerable time—many departments and institutions desire to be heard in fairness to their reports and proposed recommendations to be made in the budget.

BOARD OF ADMINISTRATION

Chapter 14486, Laws of Florida, Acts of 1929, provided for a depository of sinking funds and delinquent taxes and other moneys for road and bridge indebtedness of the counties and special road and bridge districts of the State or otherwise, and also provided for the issuance of refunding bonds by such counties and special road and bridge districts, and provided for the creation of the Board of Administration and the disbursement of such funds to pay such indebtedness, etc.

Section 12 of this act provided for a Board of Administration, consisting of the Governor as President, the State Comptroller as Secretary and the State Treasurer as Treasurer. The Attorney General is the legal advisor of this Board and has the handling of all litigation, in which this Board is a party.

The Board of Administration has become one of the most active boards in the State Government, due to the large amount of bonded obligations existing throughout the entire State, and due to various defaults, readjustments and refunding operations.

The Board meets regularly each week and frequently has special meetings. Its business is of such character that it requires the presence of the Attorney General at these meetings, and there has developed a very large amount of litigation in which the Board of Administration is a party. During the two-year period covered by this report, the Attorney General has handled seven hundred thirty-five cases wherein the Board of Administration was a party.

What is commonly known as the Kanner Act, to-wit, Chapter 15891, Laws of Florida, Acts of 1933, places upon the State Board of Administration certain duties relative to the purchase of bonds with the gasoline tax money, and this added greatly to the many duties which had already been placed upon this Board.

In handling the county and various district finances, it frequently appears to be necessary to change investments of certain bonds and to sell and dispose of bonds held for investment at a figure less than par, and it has been suggested in an opinion of the Supreme Court that the proper practice in doing this would be for the Board of Administration to institute suit in Chancery and after giving to interested parties due notice, obtain a decree of the chancellor to the effect that the proposed transfer or change in investment would be proper; and thus it is that the burden of litigation resting upon the Attorney General's Office in

connection with the matters pertaining to the Board of Administration, has been greatly increased as these various settlements and adjustments continue to be required to be made for the best interest of the counties and districts.

COMMISSION TO EXAMINE INTO VALIDITY OF STATE WARRANTS

This Commission is composed of three members, the Comptroller, Treasurer and Attorney General. (Sec. 1361, C. G. L.) The duty of this commission is to pass upon the validity and legality of Comptroller's warrants and the Treasurer's certificates issued prior to July 1, 1871.

STATE SINKING FUND COMMISSION

This Commission is composed of five members—Governor, Secretary of State, Attorney General, State Treasurer and State Superintendent of Public Instruction. (Sec. 1379, C. G. L.)

The control of the sinking fund to retire state debt is vested in this commission.

BOARD OF ASSESSMENT OF RAILROADS, TELEGRAPH AND TELEPHONE COMPANIES

This Board is composed of three members—Comptroller, Attorney General and Treasurer. (Sec. 960, C. G. L.)

The Board's duty is to make assessments of the Railroad, Telegraph and Telephone property in the State. To do this, much data and information have to be gathered, hearings held and most careful consideration and thought given to the matter as well as mature judgment exercised in making these assessments.

STATE SCHOOL BOOK COMMISSION

This Commission is composed of the Governor and his entire cabinet, which includes the Attorney General. (Sec. 852, C. G. L.) It is the duty of this Board to select and adopt a uniform series or system of school books for use in the public schools of the State and to enter into contracts for same with the publishers and to enforce the use of such books.

BOARD FOR FIXING VALUES OF INVESTMENT SECURITIES OF TRUST COMPANIES

This Board is composed of the Treasurer, Attorney General and Comptroller, and its title indicates the scope of its duties. (Sec. 6131, C. G. L.)

BOARD OF COMMISSIONERS OF OKEECHOBEE FLOOD CONTROL DISTRICT

The Attorney General is one of the ten members of this Board. The duty of this Board is to establish, construct and maintain canals, levees, dikes, etc., and do the things required by the Act, looking to Flood Control of lands set forth and described in the Act. (Chap. 13711, Acts of 1929.)

DELINQUENT TAX ADJUSTMENT BOARD OF APPEALS

This Board is composed of the Governor, Treasurer and Attorney General. This Board sits as a Board of Appeals in tax appeals provided for in the act creating the Board. (Chap. 14572, Acts of 1929.)

BOARD FOR SUPERVISION AND REGULATION OF FORMS TO BE USED FOR ASSUMPTION OF RISK BY SURETY COMPANIES

This Board is composed of the Governor, Comptroller, Treasurer and Attorney General, and its title indicates its duties. (Chap. 14489, Acts of 1929.)

STATE BOARD OF CONSERVATION

This Board is composed of the Governor, Secretary of State, the Attorney General, the Comptroller, the State Treasurer, the State Superintendent of Public Instruction, and the Commissioner of Agriculture. (Chap. 16178, Acts 1933). This Board is vested with various duties and powers. (See Chapters 17008, 17011, 17016, 17131, 17256, and 17268, Acts 1935.)

STATE HOUSING BOARD

This Board is composed of the Governor of the State, State Treasurer, Attorney General and the Commissioner of Agriculture. (Chap. 16028, Acts 1933.) This Board has many and varied duties as set forth in the act creating the Board.

Regular weekly meetings of the Trustees of the Internal Improvement Fund, State Board of Education, and Commissioners of State Institutions are held once each week on Wednesdays. The State Board of Pardons holds two regular meetings each year—March and September—and numerous other special meetings for the consideration of emergency matters. The Railroad Assessment Board meets annually. The Florida Security Commission meets two or more times per month and the other boards meet at irregular times, monthly, quarterly, annually or biennially, as called by their respective chairmen—the meetings being called and held as the business of the particular board demands.

OFFICIAL OPINIONS

In accordance and compliance with the Constitution and statutes of the State, I have during the period of this report, upon request of the administrative officers of the Executive Department of the State Government, prepared written opinions covering their official duties and powers, and have advised with them generally when called upon.

As required by law copies of all such opinions are on file in this office and many of them are set out in full in this report for convenient use by all such officers and others who may have an interest in them.

This office has been frequently called upon by other State officers, boards and commissions, such as the State Hotel Commission, State Board of Conservation, State Labor Inspector, State Board of Control, State Board of Health, etc., for opinions and advice covering their powers and duties, and while this office is not expressly required to do so, yet I have at all times sought to render such advice and furnish such written opinions, feeling that it would be of assistance in the proper interpretation and application of the statutes covering their powers and duties.

Some of these opinions are set forth in this report.

There is a large volume of work done by this office in the nature of consultation with officers wherein legal advice is sought on various questions arising in the different departments. Frequently much time is required in making proper investigation in order that proper advice may be given. Very much time of the Attorney General is thus consumed but from the very nature of the work, no record of it can be made and hence is not incorporated herein.

STATE STATUTES TESTED IN THE SUPREME COURT OF FLORIDA
AND IN THE FEDERAL COURTS

A large number of State statutes, and especially revenue producing statutes, have been challenged and attacked by appropriate Court proceedings, both in the State and Federal Courts. A complete table of such cases, showing the present status is incorporated in this report as well as all civil cases generally, other than those above mentioned which have had my attention.

Criminal cases reaching the Supreme Court have all been given proper attention, briefs filed and arguments made, the details of and present status is shown in the scheduled report herein. This also applies to all certiorari and habeas corpus proceedings.

REPORTER FOR THE SUPREME COURT

The Constitution requires the Attorney General to act as reporter for the Supreme Court.

During the two-year period covered by this report, the Attorney General has acted as reporter for Volumes 125, 126, 127, 128, 129, 130, 131, 132, and 133 of the Florida Supreme Court Reports.

All of this work is quite exacting and requires the greatest care for it must be accurate. Supplying omitted citations of cases must be done by research and interlineation of the book and page where same may be found—this occurs where the Court cites a case decided at its current term and is at the time unable to give book and page of same.

An Index Digest of the cases of each volume of the reports must be carefully made before it can be printed.

The Court expects the Attorney General to insert in each report a cross index reference of where each case reported may be found in the Southern Reporter—this requirement has been met at all times but it can readily be seen that to supply these references requires much labor and time.

PUBLISHING ACTS AND RESOLUTIONS OF LEGISLATURE

The Acts and resolutions of the Legislature of the State for 1935 have been published with marginal abstracts, as required by law, under the direction of this office.

An index to these laws and an index to the journals of each branch of the Legislature were also prepared under the direction of this office, the index to the journals having been prepared as provided by Section 128 (104) Compiled General Laws, 1927.

EXAMINATION OF ABSTRACTS OF TITLE

Where conveyance of title is made to the State or any of its institutions, the abstracts are submitted to the Attorney General, as well as abstracts covering title to property on which mortgages are deposited with the State Treasurer as securities under the Trust Act. This consumes considerable time as and when these matters are presented.

EXTRADITION MATTERS

It is the fixed policy of the Governor to refer to the Attorney General the applications for extradition of fugitives from justice. These applications have to be examined and approved or rejected, and not infrequently hearings are requested and had and written recommendations made to the Governor, all of which require considerable time of either the Attorney General or one of the Assistants.

OFFICE FURNISHINGS AND LIBRARY

Co-operating in the spirit of economy, I have purchased only such small items of furniture as was absolutely necessary and have bought

only such books for the library as were necessary in particular cases actually in the office. The continuing series of law books have, of course, been kept up to date.

ADDITIONAL REMARKS BY ATTORNEY GENERAL

During the years 1937-1938, the period covered by this Report, the volume of work handled by this office has greatly increased. Some idea as to the extent of this increase is afforded from a comparison of the number of cases handled during this period and the years 1935-1936. This comparison discloses that there have been 1,987 civil cases and 462 criminal cases during the period covered by this Report, an increase over the previous two-year period of 851 civil cases and 74 criminal cases. There has been a corresponding increase in requests for legal advice from various State officers and departments requiring numerous conferences and extensive legal research.

During recent years many problems have arisen in connection with recently created State boards and commissions. This is true also of new statutes dealing with taxation, social welfare and a wide range of subjects. For example, there has been considerable litigation as well as other legal work relating to the collection of estate taxes, a tax which until recently has been expressly prohibited by the Constitution, but which has now become an important source of State revenue.

Despite the increase in the work of this office I am not asking for increased personnel. I am, however, applying for a small increase in the compensation of those employees whose duties and responsibilities have been enlarged.

For some time I have been giving serious consideration to what appears to me to constitute a major problem in the administration of the law. The statute law of this State is in many particulars vague, uncertain and confusing. The last official revision was that of 1920 and since that time laws have been heaped upon laws, without any systematic attempt to reconcile them with each other. In my opinion steps should be taken to remedy this state of affairs. I most earnestly recommend that the Legislature provide for the appointment of a revisor of the statutory law—one who is skilled in the drafting and interpretation of statutes. I would suggest that the person so appointed be charged with substantially the following duties:

1. To prepare a revision of all statutory law for submission to the Legislature of 1941. In this revision obsolete laws should be discarded, vague provisions should be clarified and repugnancies should be eliminated.
2. To annotate each revision.
3. To consult with all State departments and public officers concerning proposed legislation.

4. To furnish factual information to the public with regard to the law, without, however, advising as to the application of the law to private problems.

5. To aid in drafting acts for the Legislature and consult with members concerning proposed legislation.

6. To prepare for each session of the Legislature a complete revision of the statutes consisting of the revision previously adopted, together with laws thereafter enacted. In this way all the laws of the State will be embodied in one revision and the statutes enacted at the current session of the Legislature.

7. To have the annotated revision printed in not more than two volumes, if possible, and sold at the lowest possible price. I am advised that such annotated revisions are sold in Wisconsin for about \$15.00.

I believe that this service can be provided at a very moderate cost and would pay for itself dozens of times over in increased efficiency. Such a service, I think, would be a boon to the Legislature in dealing with its problems. It would very materially assist State, County and Municipal Officers and the Judiciary. It would make available at a nominal cost compact volumes containing all the statutory law of the State, annotated, which is now available only in numerous volumes at a cost of approximately \$100.

My predecessor, the Honorable Cary D. Landis, died suddenly May 10, 1938, having served as Attorney General continuously since his appointment March 9, 1931. He served the people of Florida with all his ability as a great lawyer, with all his driving energy as a born leader, and with all his unselfish zeal and untiring efforts as a sincere patriot. Florida honors the memory of this great man.

After assuming my duties as Attorney General I made no changes whatsoever in the personnel of the office. I found that my predecessor had assembled an efficient and capable staff. I have since become better acquainted with those connected with the office and it is sufficient to say that my early estimation of them has been confirmed. They are courteous, tireless and conscientious workers doing their best to advance the interest of the State of Florida.

Respectfully submitted,

GEORGE COUPER GIBBS,

Attorney General.

IX.
APPROPRIATIONS AND EXPENDITURES

Salaries

APPROPRIATIONS

Balance January 1, 1937	\$ 19,544.79
Appropriation July 1, 1937, to July 1, 1939	113,240.00
Total	<u>\$132,784.79</u>

EXPENDITURES

January 1, 1937, to July 1, 1937—	
Salaries	\$ 19,544.79
Balance July 1, 1937	<u>\$113,240.00</u>
July 1, 1937, to January 1, 1939—	
Salaries	\$ 82,890.36
Balance January 1, 1939	<u>\$ 30,349.64</u>

NECESSARY AND REGULAR EXPENSE

APPROPRIATIONS

Balance January 1, 1937	\$ 8,067.16
Appropriation July 1, 1937, for 2 years	24,000.00
Total	<u>\$ 32,067.16</u>

EXPENDITURES

January 1, 1937, to January 1, 1939.

These expenses cover office equipment, law books, editing and indexing Supreme Court Reports, telephone, telegrams, stationery, stamps, traveling expenses of the Attorney General and Assistants, when on business directly affecting office, subscriptions to all legal publications, and office supplies. Also indexing and sidenoting laws passed at the 1937 Session of the Legislature

1937 Session of the Legislature	\$ 17,664.06	
Amount reverted July 1, 1937	11.33	<u>\$ 17,675.39</u>
Balance January 1, 1939		\$ 14,391.77
Less bills payable and outstanding Jan. 1, 1939		<u>2,163.12</u>
Balance		<u>\$ 12,228.65</u>

X.

COMPILED STATEMENT OF ALL CASES HANDLED FROM JANUARY 1, 1937, TO JANUARY 1, 1939.

CIVIL

Number of cases pending January 1, 1937	366
Number of cases Docketed from Jan. 1, 1937, to Jan. 1, 1939	1,621
Total	1,987
Number of cases disposed of from Jan. 1, 1937, to Jan. 1, 1939	894
Number of cases pending Jan. 1, 1939	1,093

CRIMINAL

Number of cases pending January 1, 1937	168
Number of cases docketed from Jan. 1, 1937 to Jan. 1, 1939	294
Total	462
Number of cases disposed of from Jan. 1, 1937, to Jan. 1, 1939	352
Number of cases pending Jan. 1, 1939	137

STATEMENT SHOWING COMPARISON OF CASES HANDLED FOR SIX YEAR PERIOD

	1933-1934	1935-1936	1937-1938
Civil Cases	436	1,136	1,987
Criminal Cases	401	388	462
Totals	837	1,524	2,499

XI.

REPORTS OF STATE ATTORNEYS FOR YEARS 1937-8 UNDER SECTION 132 C.G.L.

FIRST JUDICIAL CIRCUIT

Escambia County
Okaloosa County

Santa Rosa County
Walton County

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
ESCAMBIA:			
Homicide:			
First Degree	6	.....	.....
Rape .....	.....	1	.....
Embezzlement	1	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	.....
Bond Validation Proceedings	15	.....
Criminal Hearings Attended	25	.....
Habeas Corpus Hearings Attended	6	.....
Other Cases Not Enumerated Handled by State Attorney	6	.....

Respectfully submitted,

E. DIXIE BEGGS, JR.,

State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
OKALOOSA:			
Homicide:			
First Degree	4	.....	.....
Second Degree	1	3	1
Manslaughter	1	.....	.....
Robbery:			
Armed .....	.....	1	.....
Unarmed .....	.....	1	.....
Assaults:			
With intent to Commit Felony	4	6	.....
Other Assaults	1	.....	.....
Arson and Kindred Offenses	2	2	2

Burglary and Kindred Offenses	18	5	2
Larceny:			
Of Automobiles		1	...
Of Cattle	12	6	3
Kindred Offenses	5	1	1
Embezzlement		1	...
False Pretenses and Kindred Offenses	1	5	...
Forgery, Counterfeiting and Kindred			
Offenses	2	1	...
Trespasses, Injuring Buildings, etc.	3	3	...
Misconduct by Officers		1	...
Adultery, Fornication, etc.	4	5	1
Bigamy		2	...
Crime Against Nature	1	...	...
Violation Liquor Law, Second Offense	6	2	1
Desertion and Withholding Support			
from Wife and Children	7	6	1
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Operating Gambling Hall	4	...	...
Unlawfully Practicing Medicine....		2	...

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	5	...
Bond Validation Proceedings	15	...
Bond Estreature Proceedings	7	...
Criminal Hearings Attended	12	...
Other Cases Not Enumerated Handled by State		
Attorney	10	...

Respectfully submitted,

E. DIXIE BEGGS, JR.,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
SANTA ROSA:			
Homicide:			
First Degree	1	1	...
Third Degree	1	...	...
Manslaughter		1	...
Rape		2	...
Robbery:			
Armed	2	1	...
Unarmed	1	...	1

Assaults:

With intent to Commit Felony	2	3	---
Other Assaults	11	3	3
Arson and Kindred Offenses	2	2	2
Burglary and Kindred Offenses	12	3	1

Larceny:

Of Automobiles	---	2	---
Of Cattle	7	3	1
Kindred Offenses	1	2	---
Embezzlement	1	---	---
False Pretenses and Kindred Offenses	6	16	---
Forgery, Counterfeiting and Kindred	---	---	---
Offenses	4	1	---
Trespasses, Injuring Buildings, etc.	---	6	---
Bribery	---	1	---
Misconduct by Officers	---	1	---
Adultery, Fornication, etc.	8	10	1
Incest	1	---	---
Bigamy	1	---	---
Crime Against Nature	3	---	---
Violation Liquor Law, Second Offense	21	3	4
Desertion and Withholding Support	---	---	---
from Wife and Children	13	11	---
Miscellaneous Crimes Not Otherwise	---	---	---
Enumerated:	---	---	---
Driving While Drunk and Inflicting	---	---	---
Injury	1	---	---
Killing Animals	---	3	---
Violation Motor Vehicle Act	1	---	---
Securities Law Violations	1	---	---

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	---
Bond Validation Proceedings	3	---
Bond Estreature Proceedings	6	---
Criminal Hearings Attended	10	---
Habeas Corpus Hearings Attended	3	---
Other Cases Not Enumerated Handled by State	---	---
Attorney	6	---

Respectfully submitted,

E. DIXIE BEGGS, JR.,

State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
WALTON:			
Homicide:			
First Degree	1	1	...
Robbery:			
Armed	4	1	2
Assaults:			
With intent to Commit Felony	8	7	2
Other Assaults	2	3	...
Libel and Defamation	1	...	...
Sending Threatening Communications	1	...	...
Burglary and Kindred Offenses	5	1	...
Larceny:			
Of Automobiles	1	2	...
Of Cattle	7	10	2
Kindred Offenses	6	6	1
Embezzlement	2	1	...
False Pretenses and Kindred Offenses	4	6	...
Forgery, Counterfeiting and Kindred Offenses	3	2	1
Trespasses, Injuring Building, etc.	8	10	3
Perjury	2	1	...
Misconduct by Officers	...	2	...
Resisting Arrest, etc.	...	3	...
Adultery, Fornication, etc.	5	3	1
Incest	1	...	1
Violation Liquor Law, Second Offense	2	...	1
Desertion and Withholding Support from Wife and Children	9	9	...
Miscellaneous Crimes Not Otherwise Enumerated:			
Dynamiting Building	...	1	...
Killing Animals	2	1	...
Shooting Into Dwelling	...	1	...
Election Law Violators	...	1	...
Operating Gambling Hall	2	...	...

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	9	...
Bond Validation Proceedings	5	...
Bond Estreature Proceedings	9	...
Criminal Hearings Attended	5	...

Habeas Corpus Hearings Attended	4	....
Other Cases Not Enumerated Handled by State Attorney	4	....

Respectfully submitted,
E. DIXIE BEGGS, JR.,
State Attorney.

SECOND JUDICIAL CIRCUIT

Franklin County	Leon County
Gadsden County	Liberty County
Jefferson County	Wakulla County

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
FRANKLIN:			
Homicide:			
First Degree	1	....	....
Second Degree	2	1	....
Manslaughter	2	....	....
Rape	1	....	....
Robbery:			
Unarmed	2	....	....
Assaults:			
With intent to Commit Felony	12	....	2
Other Assaults	9	....	....
Burglary and Kindred Offenses	14	....	1
Larceny:			
Of Automobiles	3	....	1
Of Cattle	4	....	....
Kindred Offenses	3	....	....
Forgery, Counterfeiting and Kindred Offenses	3	....	....
Perjury	3	....	....
Desertion and Withholding Support from Wife and Children	9	....	2
Miscellaneous Crimes Not Otherwise Enumerated:			
Illegal Manufacture of Liquor	3	....	....
Possession Whiskey Without Stamps	1	....	....
Aiding in Concealment Stolen Property	4	....	....
Resisting an Officer Performance of Duty	1	....	....
Note—Two special terms of court held.			

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	.....
Bond Validation Proceedings	1	.....
Bond Estreature Proceedings	3	.....
Criminal Hearings Attended	9	.....
Other Cases Not Enumerated Handled by State Attorney	6	.....

investigations
requiring more
than 6 trips.

Respectfully submitted,
O. C. PARKER, JR.,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
GADSDEN:			
Homicide:			
First Degree	5	1	.....
Manslaughter	5	1	.....
Robbery:			
Armed	1	.....	.....
Unarmed	3	1	.....
Assaults:			
Other Assaults	13	2	.....
Arson and Kindred Offenses	2	.....	.....
Burglary and Kindred Offenses	53	15	2
Larceny:			
Of Automobiles	6	1	.....
Of Cattle	19	4	1
Kindred Offenses	5	3	.....
Embezzlement	2	.....	.....
False Pretenses and Kindred Offenses	6	.....	.....
Forgery, Counterfeiting and Kindred Offenses	14	2	1
Perjury	5	.....	.....
Desertion and Withholding Support from Wife and Children	14	2	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Shooting Into Dwelling	1	.....	.....
Operating Gambling House	2	.....	.....
Receiving Stolen Property	3	.....	.....
Abominable and Detestable Crime Against Nature	1	.....	.....
Note—5 special terms of court were held.			

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	5	....
Bond Estreature Proceedings	3	....
Criminal Hearings Attended	18	....
Other Cases Not Enumerated Handled by State Attorney	12 investigations	

Respectfully submitted,

O. C. PARKER, JR.,
State Attorney.

JEFFERSON:

Homicide:

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
First Degree	3	1	....
Second Degree	1	....	....
Manslaughter	3	1	1

Assaults:

With intent to Commit Felony	1	....	....
Other Assaults	9	2	2
Arson and Kindred Offenses	3	....	....
Burglary and and Kindred Offenses	15	3	2

Larceny:

Of Automobiles	5	2	....
Of Cattle	8	1	1
Kindred Offenses	3	....	....
False Pretenses and Kindred Offenses	3	1	....
Forgery, Counterfeiting and Kindred Offenses	3	....	1

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	1	....
Bond Estreature Proceedings	7	....
Criminal Hearings Attended	8	....
Other Cases Not Enumerated Handled by State Attorney	11 investigations	

Respectfully submitted,

O. C. PARKER, JR.,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
LEON:			
Homicide:			
First Degree	11	1	1
Second Degree	5	.....	.....
Manslaughter	7	.....	.....
Rape	1	.....	.....
Robbery:			
Armed	5	.....	.....
Unarmed	1	.....	.....
Assaults:			
With intent to Commit Felony	27	5	4
Other Assaults	11	3	1
Arson and Kindred Offenses	3	.....	.....
Burglary and Kindred Offenses	47	25	7
Larceny:			
Of Automobiles	14	1	1
Of Cattle	28	5	3
Kindred Offenses	20	3	2
Embezzlement	4	.....	.....
False Pretenses and Kindred Offenses	7	.....	.....
Forgery, Counterfeiting and Kindred Offenses	18	2	1
Bigamy	6	1	.....
Desertion and Withholding Support from Wife and Children	17	5	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Selling Liquor	77	.....	.....
Operating Truck Without Permit	11	.....	.....
Shooting Into Dwelling House	2	.....	.....
Illegal Pos. Morphine	4	.....	.....
Resisting Arrest	1	.....	.....
Removing Prop Subject to Lien	3	.....	.....
Hit and Run Driving	3	.....	.....
Practicing Medicine Without License	3	.....	.....
Culpable Negligence	2	.....	.....
Special Terms of Court	19	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	12	.....
Bond Validation Proceedings	4	.....
Bond Estreuture Proceedings	4	.....

Habeas Corpus Hearings Attended	3	....
Other Cases Not Enumerated Handled by State Attorney	57 investigations handled	

Respectfully submitted,

O. C. PARKER, JR.,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
LIBERTY:			
Assaults:			
With intent to Commit Felony	1	....	....
Other Assaults	3	1	....
Burglary and Kindred Offenses	9	1	1
Larceny:			
Of Automobiles	4	....	....
False Pretenses and Kindred Offenses	3	2	1
Forgery, Counterfeiting and Kindred Offenses	2	....	....
Desertion and Withholding Support from Wife and Children	4	1	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Wilful and Malicious Injury to Property	2	....	....
Disposing of Property Subject to Lien	2	....	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	....
Criminal Hearings Attended	7	....
Other Cases Not Enumerated Handled by State Attorney	8 investigations	

Respectfully submitted,

O. C. PARKER, JR.,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
WAKULLA:			
Homicide:			
First Degree	2	....	....
Second Degree	4	....	1

Robbery:			
Unarmed	2	....	1
Assaults:			
Other Assaults	19	5	2
Arson and Kindred Offenses .....	....	1	....
Burglary and Kindred Offenses	12	4	3
Larceny:			
Of Cattle	7	3	1
Kindred Offenses	8	4	1
Embezzlement	2	....	....
False Pretenses and Kindred Offenses	3	2	....
Bigamy	2	....	....
Desertion and Withholding Support from Wife and Children	10	2	2
Miscellaneous Crimes Not Otherwise Enumerated:			
Receiving Stolen Property	3	....	....
Driving Car Drunk Doing Personal Injury	4	....	1
Possession Liquor Without Stamps	2	....	....
Stop Netting	2	....	....
Sexual Intercourse Unmarried Fe- male Under 18 Previous Chaste Character	2	....	....

OTHER CASES HANDLED

	Number	Disposition
Bond Estreature Proceedings	2	....
Criminal Hearings Attended	5	....
Other Cases Not Enumerated Handled by State Attorney	10	Investigations

Respectfully submitted,

O. C. PARKER, JR.,
State Attorney.

THIRD JUDICIAL CIRCUIT

Columbia County	Lafayette County
Dixie County	Madison County
Hamilton County	Suwannee County
Taylor County	

Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
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COLUMBIA:

Homicide:

First Degree	5		
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Robbery:		
Armed	1	
Assaults:		
With intent to Commit Felony	10	1
Other Assaults	2	
Arson and Kindred Offenses	1	
Burglary and Kindred Offenses	16	
Larceny:		
Of Automobiles	4	
Of Cattle	6	
Kindred Offenses	6	1
Embezzlement:		
Public Officers	1	
Other Kinds	1	
Forgery, Counterfeiting and Kindred		
Offenses	8	
Misconduct by Officers	1	
Crime Against Nature	6	
Desertion and Withholding Support		
from Wife and Children	10	
Miscellaneous Crimes Not Otherwise		
Enumerated:		18
Malicious Injury to Animals	3	

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	
Criminal Hearings Attended	8	
Habeas Corpus Hearings Attended	3	
Other Cases Not Enumerated Handled by State		
Attorney	10	

Respectfully submitted,
A. K. BLACK,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
DIXIE:			
Homicide:			
First Degree	5		1
Second Degree	1		
Robbery:			
Armed	1		
Assaults:			
With intent to Commit Felony	8		

Other Assaults	2	....	....
Arson and Kindred Offenses	1	....	1
Burglary and Kindred Offenses	8	....	....
Larceny:			
Of Automobiles	2	....	....
Of Cattle	4	....	....
Kindred Offenses	8	....	1
False Pretenses and Kindred Offenses	1	....	....
Forgery, Counterfeiting and Kindred			
Offenses	5	....	1
Trepasses, Injuring Buildings, etc.	1	....	....
Resisting Arrest, etc.	2	....	....
Adultery, Fornication, etc.	1	....	....
Bigamy	1	....	....
Violation Liquor Law	1	....	....
Desertion and Withholding Support			
from Wife and Children	12	....	....
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Aiding Persons Escape Jail	1	....	....
Fraudulently Branding Animal	1	....	....
Malicious Killing of Animal	2	....	....
Unlawfully Taking Sponges	1	....	....
Maiming Animal of Another	1	....	....
Assessory After Fact to Grand			
Larceny .....	....	....	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	....
Bond Estreature Proceedings	1	....
Criminal Hearings Attended	4	....
Habeas Corpus Hearings Attended	1	....
Other Cases Not Enumerated Handled by State		
Attorney	10	....

Respectfully submitted,
A. K. BLACK,
State Attorney.

HAMILTON:

Homicide:

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
First Degree	5	....	....
Second Degree	1	....	....
Rape	1	....	....

Assaults:			
With intent to Commit Felony	19	.....	.....
Other Assaults	1	.....	2
Burglary and Kindred Offenses	6	.....	.....
Larceny:			
Of Cattle	4	.....	.....
Kindred Offenses	1	.....	.....
False Pretenses and Kindred Offenses	1	.....	.....
Forgery, Counterfeiting and Kindred Offenses	1	.....	.....
Trespasses, Injuring Buildings, etc.	1	.....	.....
Bigamy	2	.....	.....
Desertion and Withholding Support from Wife and Children	4	.....	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Liquor Law Violation	4	12	.....
Unlawful Disp. Prop. Under Lien	1	.....	.....
Inciting Another to Commit Perjury	2	.....	.....
Unlawful Wounding Animal of Another	3	.....	.....
Narcotic Law Violation	2	.....	.....
Reckless Operation of Auto	1	.....	.....
Improper License Plate	1	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	.....
Bond Validation Proceedings	2	.....
Bond Estreuture Proceedings	2	.....
Criminal Hearings Attended	2	.....
Habeas Corpus Hearings Attended	3	.....
Other Cases Not Enumerated Handled by State Attorney	7	.....

Respectfully submitted,
A. K. BLACK,
State Attorney.

LAFAYETTE:

Assaults:			
With intent to Commit Felony	6	.....	.....
Larceny:			
Of Cattle	1	.....	.....

Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
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Kindred Offenses	3		
Desertion and Withholding Support from Wife and Children	6		
Miscellaneous Crimes Not Otherwise Enumerated:			
Violation Liquor Law	1	9	
Lewd Conduct	1		
Allowing Minor Play Pool	1		
Operating Auto While Drunk	1		

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	
Bond Validation Proceedings	1	
Bond Estreature Proceedings	4	
Criminal Hearings Attended	1	
Other Cases Not Enumerated Handled by State Attorney	6	

Respectfully submitted,

A. K. BLACK,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
MADISON:			
Homicide:			
First Degree	5		1
Second Degree	1		
Manslaughter	1		
Assaults:			
With intent to Commit Felony	23		
Other Assaults	3		
Burglary and Kindred Offenses	7		1
Larceny:			
Of Cattle	4		
Kindred Offenses	2		
False Pretenses and Kindred Offenses	3		
Forgery, Counterfeiting and Kindred Offenses	29		1
Trespasses, Injuring Buildings, etc.	2		
Resisting Arrest, etc.	2		
Desertion and Withholding Support from Wife and Children	15		
Miscellaneous Crimes Not Otherwise Enumerated:			
Liquor Law Violation	10		

Maining of Animal	3	.....	1
Unlawful Operation of Auto	1	.....	.....
Unlawful Ex. of Gun	1	.....	.....
Lewd Cohabitation	1	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	11	.....
Bond Estreature Proceedings	11	.....
Criminal Hearings Attended	3	.....
Habeas Corpus Hearings Attended	3	.....
Other Cases Not Enumerated Handled by State Attorney	12	.....

Respectfully submitted,
A. K. BLACK,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
SUWANNEE:			
Homicide:			
First Degree	12	.....	.....
Manslaughter	2	.....	1
Rape	1	.....	.....
Robbery:			
Armed	3	.....	.....
Assaults:			
With intent to Commit Felony	7	.....	.....
Other Assaults	2	.....	.....
Burglary and Kindred Offenses	13	.....	.....
Larceny:			
Of Cattle	2	.....	1
Kindred Offenses	14	.....	.....
Embezzlement	1	.....	.....
False Pretenses and Kindred Offenses	3	.....	.....
Forgery, Counterfeiting and Kindred Offenses	5	.....	.....
Desertion and Withholding Support from Wife and Children	6	.....	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Worthless Check	2	.....	.....
Unlawful Injury to Persons by Auto	11	.....	.....
Selling Mrtg. Prop.	3	.....	.....
Violation Narcotic Law	4	.....	.....
Attempt Commit Felony	1	.....	.....

Unlawful Cutting Fence	1
Violating Liquor Law	3

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	10	
Bond Validation Proceedings	1	
Bond Estreasure Proceedings	3	
Criminal Hearings Attended	6	
Habeas Corpus Hearings Attended	5	
Other Cases Not Enumerated Handled by State Attorney	15	

Respectfully submitted,

A. K. BLACK,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
TAYLOR:			
Homicide:			
First Degree	6		
Manslaughter	2		1
Mayhem	1		
Assaults:			
With Intent to Commit Felony	7		
Other Assaults	1		
Burglary and Kindred Offenses	1		
Larceny:			
Of Automobiles	1		
Of Cattle	6		2
Kindred Offenses	6		
Embezzlement	2		
False Pretenses and Kindred Offenses	5		
Forgery, Counterfeiting and Kindred Offenses	1		
Trespasses, Injuring Buildings, etc.	3		
Desertion and Withholding Support from Wife and Children	19		
Miscellaneous Crimes Not Otherwise Enumerated:			
Indictment to County Judges Court	14		
Illegal Taking of Sponges	6		
Lewd Cohabitation	2		
Removing Property Illegally from County	2		

Keeping House Ill Fame	1	....	....
Unlawfully Killing Animal of Another	1	....	....

OTHER CASES HANDLED

Bond Validation Proceedings	1	....
Criminal Hearings Attended	2	....
Habeas Corpus Hearings Attended	1	....
Other Cases Not Enumerated Handled by State Attorney	12	....

Respectfully submitted,
A. K. BLACK,
State Attorney.

FOURTH JUDICIAL CIRCUIT

June 21, 1937—January 12, 1938

Clay County
Duval County
Nassau County

Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
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CLAY:

Homicide:

First Degree	2		
Manslaughter	2		

Mayhem Informations

Rape filed by
State Atty.

Assaults:

With intent to Commit Felony	1	....	....
Arson and Kindred Offenses	2	....	1
Burglary and Kindred Offenses	2	....	1

Larceny:

Of Automobiles	1	....	....
Of Cattle	8	....	1
Kindred Offenses	1	....	....

Forgery, Counterfeiting and Kindred
Offenses 1

Miscellaneous Crimes Not Otherwise

Enumerated:

Shooting Into Dwelling House	1	....	....
Carnal Intercourse, etc.	1	....	....
Bastardy Proceedings	1	....	....
Selling Security w/o Registration	1	....	....
Operating Veh. w/o Certificate	1	....	....

OTHER CASES HANDLED

	Number	Disposition
Criminal Hearings Attended	4	....
Habeas Corpus Hearings Attended	1	....
Restoration to Sanity Hearings	2	....

Respectfully submitted,
WILLIAM A. HALLOWES, III.
 State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
DUVAL:			
Homicide:			
Assaults:			
First Degree	29	10 No Bills	3
Second Degree	12	in Homicide	Certified
Manslaughter	5	Cases	to Crim.
			Court
Rape	2	....	....
With intent to Commit Felony	1	....	Certified
			to Crim.
			Court
False Pretenses and Kindred Offenses	1	....	Certified
			to Crim.
			Court

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Supreme Court	1	....
Bond Validation Proceedings	12	....
Bond Estreature Proceedings	86	....
Criminal Hearings Attended, Inquests, etc.	84	....
Habeas Corpus Hearings Attended	17	....
Writs of Error to Criminal Ct. and Municipal Ct.	9	....
Restoration to Sanity Hearings	14	....
Disbarment Proceedings	3	....

Respectfully submitted,
WILLIAM A. HALLOWES, III.
 State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
NASSAU:			
Homicide:			
First Degree	2	....	....

Manslaughter	3	1
Mayhem	Information	
Rape	filed by	
	State Atty.	
Assaults:		
With intent to Commit Felony	3	1
Burglary and Kindred Offenses	3	
Larceny:		
Of Automobiles	2	
Of Cattle	3	2
Kindred Offenses	4	
Forgery, Counterfeiting and Kindred		
Offenses	1	
Miscellaneous Crimes Not Otherwise		
Enumerated:		
Extortion	1	
Issuing Worthless check	1	
Operating Overloaded Truck	1	
Operating Veh. w/o License	1	
Shrimping in Inside Waters	1	

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	2	
Criminal Hearings Attended	9	
Habeas Corpus Hearings Attended	3	
Disbarment Proceedings	1	

Respectfully submitted,

WILLIAM A. HALLOWES, III,

State Attorney.

FIFTH JUDICIAL CIRCUIT

Citrus County	Lake County
Hernando County	Marion County
Sumter County	

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
CITRUS:			
Homicide:			
First Degree	2		1
Second Degree	1		
Manslaughter	1		1
Rape	2		

Robbery:			
Armed	3	...	...
Assaults:			
With intent to Commit Felony	5	8	1
Burglary and Kindred Offenses	18	2	1
Larceny:			
Of Automobiles	1	...	...
Of Cattle	2	...	...
Kindred Offenses	4	2	1
Forgery, Counterfeiting and Kindred			
Offenses	2	...	...
Trespasses, Injuring Buildings, etc.	2	...	...
Perjury	4	...	...
Adultery, Fornication, etc.	2	2	...
Violation Liquor Law	1	...	...

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	4	Validated
Criminal Hearings Attended	6	...
Other Cases Not Enumerated Handled by State		
Attorney	2	...

Respectfully submitted,

J. W. HUNTER,

State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
HERNANDO:			
Homicide:			
First Degree	1	...	...
Manslaughter	...	1	...
Rape	...	3	...
Robbery:			
Armed	2	...	1
Assaults:			
With intent to Commit Felony	4	...	...
Arson and Kindred Offenses	...	1	...
Burglary and Kindred Offenses	9	...	...
Larceny:			
Of Automobiles	3	...	1
Of Cattle	1	...	...
Kindred Offenses	5	...	...
Embezzlement	1	...	...
False Pretenses and Kindred Offenses	1	...	...

Trespasses, Injuring Buildings, etc.	1	....	....
Violation Liquor Law	1	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Impersonating Officer		1	....
Illegal Voting in Primary	7	....	....

OTHER CASES HANDLED

	Number	Disposition
Bond Estreature Proceedings	3	....
Criminal Hearings Attended	5	....
Other Cases Not Enumerated Handled by State Attorney	4	....

Respectfully submitted,
J. W. HUNTER,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
LAKE:			
Homicide:			
First Degree	8	6	....
Manslaughter	3	1	....
Mayhem	1	....	....
Rape .....	....	3	....
Robbery:			
Unarmed	3	2	1
Assaults:			
With intent to Commit Felony	29	11	2
Other Assaults .....	....	2	....
Sending Threatening Communications .....	....	1	....
Burglary and Kindred Offenses	37	10	3
Larceny:			
Of Automobiles	3	....	....
Kindred Offenses	25	9	2
Embezzlement	2	....	1
False Pretenses and Kindred Offenses	1	3	....
Forgery, Counterfeiting and Kindred Offenses	6	4	....
Resisting Arrest, etc.	1	1	....
Adultery, Fornication, etc.	2	3	....
Violation Liquor Law	37	7	....
Desertion and Withholding Support from Wife and Children	15	7	....

Miscellaneous Crimes Not Otherwise

Enumerated:

Hit and Run Driver	2	1	....
Lottery Violations	4	3	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	24	Dismissed
Bond Validation Proceedings	3	....
Bond Estreature Proceedings	4	Favorable
Criminal Hearings Attended	53	....
Habeas Corpus Hearings Attended	9	Remanded
Other Cases Not Enumerated Handled by State Attorney	3	....

Respectfully submitted,

J. W. HUNTER,

State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
MARION:			
Homicide:			
First Degree	7	2	3
Second Degree	2	....	....
Manslaughter	8	....	....
Rape	1	1	1
Robbery:			
Armed	4	1	2
Assaults:			
With intent to Commit Felony	9	3	....
Burglary and Kindred Offenses	37	1	2
Larceny:			
Of Automobiles	11	....	1
Of Cattle	9	....	1
Kindred Offenses	12	....	....
Embezzlement	3	2	....
False Pretenses and Kindred Offenses .....	....	2	....
Forgery, Counterfeiting and Kindred Offenses	17	....	....
Trespasses, Injury Buildings, etc.	3	....	1
Resisting Arrest, etc.	1	....	....
Adultery, Fornication, etc.	2	1	....
Incest	2	....	....
Violation Liquor Law	37	2	1
Desertion and Withholding Support from Wife and Children	2	....	....

Miscellaneous Crimes Not Otherwise
Enumerated:

Lottery Violations	7	1	....
Hit and Run Driver	2	1	....
Operation Motor Vehicles	2	....	....
Malicious Injury to Animals, etc.	2	....	....
Violations Railroad Com. Act	26	1	....
Obstructing Railroad Tracks	1	....	1

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	5	....
Bond Validation Proceedings	3	Validated
Bond Estreature Proceedings	6	Favorable
Criminal Hearings Attended	73	....
Habeas Corpus Hearings Attended	14	9 discharged
Other Cases Not Enumerated Handled by State Attorney	4	....

Respectfully submitted,

J. W. HUNTER,

State Attorney.

SUMTER:

Homicide:

First Degree	1	1	....
Second Degree	2	....	....
Manslaughter	1	....	....

Assaults:

With intent to Commit Felony	15	1	....
Arson and Kindred Offenses	1	....	....
Burglary and Kindred Offenses	6	....	1

Larceny:

Of Automobiles	2	....	....
Of Cattle	5	....	....
Kindred Offenses	11	1	2

Forgery, Counterfeiting and Kindred
Offenses

Offenses	3	....	....
Resisting Arrest, etc.	1	....	....
Adultery, Fornication, etc.	3	....	....
Incest	1	....	....
Desertion and Withholding Support from Wife and Children	6	....	....

Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
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OTHER CASES HANDLED

	Number	Disposition
Criminal Hearings Attended	7	
Habeas Corpus Hearings Attended	1	Remanded
Other Cases Not Enumerated Handled by State Attorney	3	....

Respectfully submitted,
J. W. HUNTER,
State Attorney.

SIXTH JUDICIAL CIRCUIT

Pasco County
Pinellas County

	Indictments Returned by Grand Jury. And Informations filed	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
PASCO:			
Homicide:			
First Degree	2	....	....
Second Degree	1	....	....
Manslaughter	1	....	....
Assaults:			
With intent to Commit Felony .....	....	2	....
Arson and Kindred Offenses	5	....	2
Larceny:			
Of Automobiles	3	2	....
Of Cattle	4	....	1
Kindred Offenses	23	9	....
Embezzlement	1	....	....
False Pretenses and Kindred Offenses	2	2	....
Forgery, Counterfeiting and Kindred Offenses	1	....	....
Perjury	1	1	....
Adultery, Fornication, etc.	4	3	....
Bigamy	1	....	1
Desertion and Withholding Support from Wife and Children	5	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Selling or Possessing Lottery Tickets	2	....	2
Maliciously Killing an Animal	2	2	....
Breaking and Entering	13	5	1
Bastardy	1	....	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	1 pending, 1 dismissed
Bond Validation Proceedings	9	all validated
Bond Estreature Proceedings	1	dismissed
Criminal Hearings Attended	23	....
Habeas Corpus Hearings Attended	1	defendant released

Respectfully submitted,
CHESTER B. McMULLEN,
 State Attorney.

	Indictments Returned by Grand Jury. And Informations filed	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
PINELLAS:			
Homicide:			
First Degree	6	....	2
Second Degree	7	....	2
Manslaughter	8	....	4
Rape	1	....	....
Attempt to Rape	1	....	....
Robbery:			
Armed	3	....	....
Unarmed	8	....	2
Assaults:			
With intent to Commit Felony	10	....	2
Arson and Kindred Offenses	1	....	....
Burglary and Kindred Offenses	69	....	3
Larceny:			
Of Automobiles	9	....	....
Of Cattle	1	....	....
Kindred Offenses	11	....	3
Embezzlement	3	....	....
False Pretenses and Kindred Offenses	4	....	....
Forgery, Counterfeiting and Kindred Offenses	40	....	1
Resisting Arrest, etc.	3	....	....
Bigamy	2	....	1
Crime Against Nature	1	....	....
Violation Liquor Law	14	....	....
Desertion and Withholding Support from Wife and Children	24	....	1

Miscellaneous Crimes Not Otherwise

Enumerated:

Conducting a Lottery	1	.....	.....
Violation of Narcotic Law	2	.....	.....
Exhibiting Obscene Literature	1	.....	.....
Aiding a Felon to Avoid Arrest	1	.....	.....
Receiving and Concealing Stolen Property	2	.....	.....
Carnal Intercourse	1	.....	.....
Uttering and Passing Forged Instrument	1	.....	.....
Possession of Lottery Tickets	8	.....	.....
Miscellaneous		4	.....
Disbarment Proceedings	2	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	9	8 dismissed, 1 pending
Bond Validation Proceedings	8	8 validated
Bond Estreuture Proceedings	15	7 reinstated, 7 notice to bondsman, 1 judgment
Criminal Hearings Attended	62	.....
Habeas Corpus Hearings Attended	8	4 ordered discharged
Other Cases Not Enumerated Handled by State At- torney. Evidence not sufficient for prosecution	79	dismissed

Respectfully submitted,

CHESTER B. McMULLEN,
State Attorney.

SEVENTH JUDICIAL CIRCUIT

Flagler County
Putnam CountySt. Johns County
Volusia County

Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
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FLAGLER:

Homicide:

Second Degree	4		
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Robbery:

Armed	5		
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Unarmed	4		
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Assaults:

With intent to Commit Felony	1		
Other Assaults	4		

Larceny:

Of Automobiles	1		
Kindred Offenses	2	.....	.....

Forgery, Counterfeiting and Kindred
Offenses

1

Incest

1

Bigamy

1

Miscellaneous Crimes Not Otherwise
Enumerated:

Hit and Run Driver	1	.....	.....
Possession of Stolen Property	1	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	2	.....

Respectfully submitted,
MURRAY SAMS,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
PUTNAM:			
Homicide:			
First Degree	3	.....	.....
Manslaughter	2	.....	.....
Mayhem	1	.....	.....
Rape	1	.....	.....
Assaults:			
With intent to Commit Murder	3	.....	.....
Larceny:			
Grand Larceny	11	.....	.....
Of Cattle	3	.....	.....
Of Hogs	3	.....	.....
Embezzlement	3	.....	.....
Forgery, Counterfeiting and Kindred Offenses	2	.....	.....
Incest	1	.....	.....
Desertion and Withholding Support from Wife and Children	2	.....	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Breaking and Entering	19	.....	.....
Lottery	9	.....	.....

Killing Cow	1	.....	.....
Operating Business Without License	1	.....	.....
Injury to Personal Property	2	.....	.....
Entering Without Breaking	2	.....	.....
Cutting Timber on Delinquent Tax Land	2	.....	.....
Wilfully Shooting Animal of Another	1	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	5	.....
Habeas Corpus Hearings Attended	3	.....

Respectfully submitted,
MURRAY SAMS,
State Attorney.

	Indictments Returned by Grand Jury. And Information Filed	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
ST. JOHNS:			
Homicide:			
First Degree	9	.....	4
Robbery:			
Armed	3	.....	2
Assaults:			
With intent to Commit Felony	9	.....	1
Other Assaults	3	.....	.....
Arson and Kindred Offenses	1	.....	.....
Larceny:			
Of Automobiles	2	.....	.....
Of Cattle	4	.....	2
Kindred Offenses	6	2	1
Embezzlement	1	.....	.....
Forgery, Counterfeiting and Kindred Offenses	6	.....	3
Perjury	2	.....	.....
Violation Liquor Law, Second Offense	5	1	.....
Desertion and Withholding Support from Wife and Children	3	.....	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Breaking and Entering	26	.....	1

Miscellaneous	9	1	.....
No True Bills		21	.....
Attachment for Witness (1)			
Cases not completed			18

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	8	6 dismissed, 2 reversed
Bond Validation Proceedings	4	.....
Bond Estreature Proceedings	1	.....

Respectfully submitted,
MURRAY SAMS,
State Attorney.

Information Returned by State Atty. or Indictments Returned by Grand Jury.	No. Inf. or No Bills Returned by Grand Jury. or State Atty.	Verdicts of Not Guilty Returned.
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VOLUSIA:

Homicide:

First Degree	12 Indicts.	10 by G. J 1 2 by S. Atty
Second Degree	1 Inf.	
Third Degree .....	.....	1 No Inf.
Manslaughter	1 Inf.	4 No Inf. 1
Rape	1 Inf.	.....

Robbery:

Armed	4 Inf.	2 No Inf.
Unarmed	3 Inf.	.....
False Imprisonment and Kidnapping .....	.....	1 No Inf.

Assaults:

With intent to Commit Felony	7 Inf.	4 No Inf.
Other Assaults	9 Inf.	5 No Inf.

Larceny:

Of Automobiles	7 Inf.	.....
Grand Larceny	29 Inf.	9 No Inf.
Affray .....	.....	1 No Inf.

Embezzlement:

Public Officers	3 Indicts.	.....
Other Kinds	6 Inf.	.....
False Pretenses and Kindred Offenses	12 Inf.	6 No Inf.
Forgery, Counterfeiting and Kindred Offenses	17 Inf.	1 No Inf.

Violation Narcotic Laws	1 Inf.		
Perjury		1 No Inf.	
Bribery	8 Inf.		
Defrauding	2 Inf.		
Conspiracy Possession of Stolen Prop.	1 Inf.	1 No Inf.	
Bastardy	2 Inf.		
Abortion	1 Inf.		
Bigamy	1 Inf.		
Keeping House of Ill Fame	1 Inf.		
Crime Against Nature	2 Inf.		
Violation Liquor Law	5 Inf.	1 No Inf.	
Desertion and Withholding Support from Wife and Children	15 Inf.	3 No Inf.	2
Miscellaneous Crimes Not Otherwise Enumerated:			
B. & E. to Commit a Felony	26 Inf.	1 No Inf.	1
B. & E. to Commit a Misdemeanor	27 Inf.	5 No Inf.	
Breaking Without Entering	2 Inf.		
Oper. Vehicle for Hire Without Permit from R. R. Comm.	7 Inf.		
Possession and Selling Lottery Tickets	2 Inf.		
Engaged in Selling Sec. Without from Securities Comm.	4 Inf.		
Removing Property Under Lien	15 Inf.	3 No Inf.	
Buying & Receiving Stolen Prop....	3 Inf.	1 No Inf.	
Improper Exhibition of Dangerous Weapon	2 Inf.		
Obstructing Officer in Course of Duty	1 Inf.	2 No Inf.	
Maliciously Killing Animal of Another	1 Inf.		
Failure of Motor Vehicle Operator to Stop and Aid Injured Person	2 Inf.		
	243	64	5

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	88	84 G-4 N. G.
Bond Validation Proceedings	9	
Bond Estreasure Proceedings	11	
Criminal Hearings Attended	39	
Habeas Corpus Hearings Attended	42	

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Respectfully submitted,
MURRAY SAMS,
State Attorney.

EIGHTH JUDICIAL CIRCUIT

Alachua County		Gilchrist County	
Baker County		Levy County	
Bradford County		Union County	
	Indictments Returned by Grand Jury. And Information Filed	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
ALACHUA:			
Homicide:			
First Degree	15	4	4
Second Degree	3	...	...
Manslaughter	4	...	1
Robbery:			
Armed	2	...	...
Unarmed	5	...	...
Assaults:			
With intent to Commit Felony	22	...	4
Other Assaults	4	...	1
Arson and Kindred Offenses	1	...	...
Burglary and Kindred Offenses	74	...	5
Larceny:			
Of Hog	31	...	2
Of Automobiles	19	...	1
Of Cattle	2	...	...
Kindred Offenses	3	...	...
Embezzlement	2	...	...
Forgery, Counterfeiting and Kindred			
Offenses	45	...	2
Perjury	1	...	1
Resisting Arrest, etc.	11	...	...
Violation Liquor Law	29	...	4
Desertion and Withholding Support			
from Wife and Children	1	...	...
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Setting Up Lottery	1	...	...
Unlawful Operation Coin Devices	23	...	...
Unlawful Operation Motor Vehicles	18	...	...
Uniform Narcotic Act	1	...	...
Habeas Corpus Hearings Attended	18	...	...

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	18	15
Bond Validation Proceedings	6	6

Criminal Hearings Attended	17	....
Habeas Corpus Hearings Attended	18	....

Respectfully submitted,
J. C. ADKINS,
State Attorney.

	Indictments Returned by Grand Jury. And Information Filed	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
BAKER:			
Homicide:			
First Degree	7	4	....
Second Degree	1	....	....
Third Degree	1	....	....
Assaults:			
With intent to Commit Felony	2	1	....
Larceny:			
Of Automobile	3	....	....
Of Hog	5	....	....
Embezzlement	1	....	....
Bigamy	1	1	....
Violation Liquor Law	1	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Shooting into Dwlg. House	1	....	....
Unlawful Carnal Intercourse	1	1	....

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	5	5
Criminal Hearings Attended	3	3

Respectfully submitted,
J. C. ADKINS,
State Attorney.

	Indictments Returned by Grand Jury. And Information Filed	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
BRADFORD:			
Homicide:			
First Degree	1	1	....
Manslaughter	1	....	....

Robbery:			
Armed	1	....	....
Assaults:			
With intent to Commit Felony	6	....	1
Burglary and Kindred Offenses	5	....	1
Larceny	4	....	....
Forgery, Counterfeiting and Kindred			
Offenses	4	....	....
Violation Liquor Law	3	....	1
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Unlawful Carnal Intercourse	1	....	....
Setting Up Lottery	1	....	....
Aiding Prisoner to Escape	2	....	....
Practicing Medicine Without			
License	1	....	....
Unlawful Operation Motor Vehicle	10	....	....

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	4	4
Criminal Hearings Attended	6	....
Habeas Corpus Hearings Attended	3	3

Respectfully submitted,
J. C. ADKINS,
State Attorney.

Indictments Returned by Grand Jury. And Information Filed	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
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GILCHRIST:

Homicide:			
First Degree	5		1
Second Degree	1		
Burglary and Kindred Offenses	2		
Larceny	4	....	....
Of Hog	3	....	....
Of Automobiles	2	....	....
Kindred Offenses	2	....	....
Trespasses, Injuring Buildings, etc.	1	....	....
Perjury	2	....	....
Incest	1	....	....
Desertion and Withholding Support			
from Wife and Children	1	....	....

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	3	3
Criminal Hearings Attended	5	.....
Habeas Corpus Hearings Attended	2	2

Respectfully submitted,
J. C. ADKINS,
State Attorney.

	Indictments Returned by Grand Jury. And Information Filed	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
LEVY:			
Homicide:			
First Degree	5	1	.....
Robbery:			
Armed	2	.....	.....
Assaults:			
With intent to Commit Felony	3	.....	.....
Burglary and Kindred Offenses	7	.....	.....
Larceny:			
Of Hog	10	.....	1
Of Cattle	4	.....	1
Kindred Offenses	4	.....	.....
Violation Liquor Law	4	.....	1
Desertion and Withholding Support from Wife and Children	2	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	5	5
Criminal Hearings Attended	15	.....
Habeas Corpus Hearings Attended	2	.....

Respectfully submitted,
J. C. ADKINS,
State Attorney.

	Indictments Returned by Grand Jury. And Information Filed	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
UNION:			
Homicide:			
First Degree	2	1	.....

Assaults:

With intent to Commit Felony	7	2	1
Other Assaults	1	...	...
Burglary and Kindred Offenses	1	...	...
Trespasses, Injuring Buildings, etc.	1	...	...
Violation Liquor Law	3	...	...
Desertion and Withholding Support from Wife and Children	1	...	...
Miscellaneous Crimes Not Otherwise Enumerated:			
Maliciously Maiming Animal	1	...	...
Shooting into Dwlg. House	1	...	...
Conveying Weapon into Prison	1	...	...
Hit and Run Driver	1	...	...

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	Aff.
Habeas Corpus Hearings, Attended	9	9

Respectfully submitted,

J. C. ADKINS,

State Attorney.

1937-1938

SUPPLEMENTAL REPORT OF STATE ATTORNEY

Eighth Judicial Circuit of Florida.

Not Contained in Separate County Report.

Number of Office Conferences with Witnesses and Law Enforcement Officials	767
Number of Witnesses Examined to determine whether or not Information will be filed	1106
Number of Cases in which Criminal Prosecution Discontinued after the taking of Testimony	161
Number of Letters written pertaining to Criminal Matters	1632
Number of Days attending Court either for trial or for Arraignments	171

Respectfully submitted,

J. C. ADKINS,

State Attorney.

NINTH JUDICIAL CIRCUIT

Brevard County	Osceola County		
Indian River County	Okeechobee County		
Martin County	Saint Lucie County		
Orange County	Seminole County		
	Informations, or	No Bills	Verdicts of
	Indictments	Returned by	Not Guilty
	Returned by	Grand Jury.	Returned.
	Grand Jury.		
BREVARD:			
Homicide:			
First Degree	4	1	
Robbery:			
Armed	4		
Unarmed	1		
False Imprisonment and Kidnapping	1		1
Assaults:			
With intent to Commit Felony	6		
Other Assaults	2		
Burglary and Kindred Offenses	23		3
Larceny:			
Of Automobiles	8		
Of Cattle and Hogs	4		1
Kindred Offenses	4		
Embezzlement	3		
False Pretenses and Kindred Offenses	3		
Forgery, Counterfeiting and Kindred			
Offenses	2		
Offenses Against Public Revenue	2		
Perjury	1		
Resisting Arrest, etc.	1		
Incest	2		
Violation Liquor Law, Second Offense	3		
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Common Thief	1		
Stealing Fruit at Night	1		
Hit and Run Driver	1		
Shooting into Dwelling	1		
Lewd and Lascivious Behavior	1		

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	Dismissed
Bond Validation Proceedings	6	

Bond Estreasure Proceedings	8	....
Criminal Hearings Proceedings	19	(Not counting pleas of guilty in vacation)
Habeas Corpus Hearings Attended	14	....

Respectfully submitted,
MURRAY W. OVERSTREET,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
INDIAN RIVER:			
Homicide:			
First Degree	4	....	....
Robbery:			
Unarmed .....	....	1	....
False Imprisonment and Kidnapping..	1	....	....
Assaults:			
With intent to Commit Felony	11	1	1
Burglary and Kindred Offenses	11	....	1
Larceny:			
Of Automobiles	4	1	....
Kindred Offenses	2	1	....
Embezzlement	4	....	....
Forgery, Counterfeiting and Kindred Offenses	5	....	1
Resisting Arrest, etc.	2	....	2
Adultery, Fornication, etc. ....	....	1	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Entering Fruit Grove	2	....	....

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	6	validated
Bond Estreasure Proceedings	1	estreated
Criminal Hearings Attended	26	....
Habeas Corpus Hearings Attended	5	....

Respectfully submitted,
MURRAY W. OVERSTREET,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
MARTIN:			
Homicide:			
First Degree	1	1	---
Manslaughter	2	---	1
Robbery:			
Armed	1	---	---
Assaults:			
With intent to Commit Felony	3	---	---
Burglary and Kindred Offenses	1	---	---
Larceny:			
Of Cattle	1	---	---
Kindred Offenses	2	1	---
Forgery, Counterfeiting and Kindred Offenses	5	1	1
Adultery, Fornication, etc.	---	1	---
Desertion and Withholding Support from Wife and Children	---	1	---
Miscellaneous Crimes Not Otherwise Enumerated:			
Entering Fruit Grove	2	---	---

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	dismissed
Bond Validation Proceedings	5	validated
Criminal Hearings Attended	8	---
Habeas Corpus Hearings Attended	3	---

Respectfully submitted,
MURRAY W. OVERSTREET,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
ORANGE:			
Homicide:			
First Degree	14	---	1 N. P. 1 not tried

OTHER CASES HANDLED

	Number	Disposition
Sanity Hearings	9	---
Bond Validation Proceedings	28	---
Criminal Hearings Attended	20	---

Habeas Corpus Hearings Attended	39	....
Investigations Made	75	....
Days Court Attendance	57	....
Representing Patient State Hospital in Suit	1	....

Respectfully submitted,
MURRAY W. OVERSTREET,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
OSCEOLA:			
Homicide:			
Manslaughter	3	....	1 rel. prel. 1 not tried
Rape	1	....	....
Assaults:			
With intent to Commit Felony	1	2	....
Burglary and Kindred Offenses	16	....	5
Larceny:			
Of Automobile	4	....	1 1 N. P.
Kindred Offenses	1	....	....
False Pretenses and Kindred Offenses	3	....	1 N. P.
Forgery, Counterfeiting and Kindred Offenses	2	....	....
Resisting Arrest, etc.	2	1	....
Adultery, Fornication, etc.	1	....	rel. on H. C.
Incest	1	....	rel. on prel.
Crime Against Nature	1	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Abatement Nuisances	2	....	....

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	1	....
Criminal Hearings Attended	10	....
Habeas Corpus Hearings Attended	2	....
Sanity Hearings	1	....

Respectfully submitted,
MURRAY W. OVERSTREET,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
OKEECHOBEE:			
Homicide:			
First Degree	1	.....	.....
Burglary and Kindred Offenses	9	1	.....
Larceny:			
Of Automobiles	4	.....	1
Kindred Offenses	8	.....	5
Forgery, Counterfeiting and Kindred			
Offenses	3	.....	.....
Adultery, Fornication, etc.	2	5	.....
Crime Against Nature	1	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	Dismissed
Bond Validation Proceedings	3	Validated
Bond Estreature Proceedings	1	Dismissed
Criminal Hearings Attended	3	.....

Respectfully submitted,

MURRAY W. OVERSTREET,

State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
SAINT LUCIE:			
Homicide:			
First Degree	5	.....	1
Manslaughter	2	.....	2
Robbery:			
Armed	1	.....	.....
Unarmed	1	.....	.....
Assaults:			
With intent to Commit Felony	9	1	.....
Sending Threatening Communications	2	.....	.....
Arson and Kindred Offenses	1	.....	.....
Burglary and Kindred Offenses	6	1	1
Larceny:			
Of Automobiles	5	.....	.....
Of Cattle	4	1	1
Kindred Offenses	11	6	.....
Embezzlement .....	.....	2	.....
False Pretenses and Kindred Offenses	1	.....	.....

Forgery, Counterfeiting and Kindred Offenses	6	1	1
Perjury	1	....	....
Adultery, Fornication, etc.	5	....	....
Crime Against Nature	1	....	1
Desertion and Withholding Support from Wife and Children	5	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Carrying Weapon Into Jail	1	....	....
Operating Gambling House	1	....	....
Burning Woods .....	....	2	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	Affirmed
Bond Validation Proceedings	7	Validated
Criminal Hearings Attended	25	....
Habeas Corpus Hearings Attended	10	....

Respectfully submitted,
MURRAY W. OVERSTREET,
 State Attorney.

	Informations, or Indictments Returned by Grand Jury.	No Bills Returned by, Grand Jury.	Verdicts of Not Guilty Returned.
SEMINOLE:			
Homicide:			
First Degree	5	1	....
Second Degree	2	....	....
Manslaughter	1	....	....
Rape	1	....	....
Robbery:			
Armed	3	1	....
Unarmed	1	....	1
Assaults:			
With intent to Commit Felony	7	....	....
Burglary and Kindred Offenses	27	2	2
Larceny:			
Of Automobiles	5	....	....
Of Cattle and Hogs	7	....	....
Kindred Offenses	8	1	1
False Pretenses and Kindred Offenses	1	....	....
Forgery, Counterfeiting and Kindred Offenses	5	1	....
Perjury .....	....	1	....

Resisting Arrest, etc.	1	....	....
Crime Against Nature	1	....	....
Desertion and Withholding Support from Wife and Children	2	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Entering Fruit Grove at Night with Intent to Commit Larceny	2	....	....
Keeping Gambling Rooms	2	....	....
Conducting a Lottery, etc.	3	....	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	2 dismissed, 1 guilty
Criminal Hearings Attended	28	Not counting pleas of guilty in vacation
Habeas Corpus Hearings Attended	11	....

Respectfully submitted,
MURRAY W. OVERSTREET,
State Attorney.

TENTH JUDICIAL CIRCUIT

Hardee
Highlands
Polk

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury. <i>CV</i>	Verdicts of Not Guilty Returned.
Homicide:			
First Degree	34	11	3
Second Degree	2	....	....
Manslaughter	5	....	2
Rape	1	....	....
Robbery:			
Armed	1	....	....
Assaults:			
With intent to Commit Felony ..	32	....	6
Other Assaults	29	....	4
Burglary and Kindred Offenses	36	....	3
Larceny:			
Of Automobiles	17	....	....
Of Cattle	6	....	....
Kindred Offenses	8	....	....

Embezzlement:

Public Officers	1		
Other Kinds	14		
False Pretenses and Kindred Offenses	5		
Forgery, Counterfeiting and Kindred Offenses	11		
Resisting Arrests, etc.	6		
Adultery, Fornication, etc.	5		
Crime Against Nature	4		
Violation of Liquor Law	6		
Violation and Withholding Support from Wife and Children	9		
Miscellaneous Crimes Not Otherwise Enumerated:			
Narcotic Cases	9		
Lottery and Kindred Offenses	18		
Property Damage Driving Drunk	7		
Prison Escape	13		
Hit and Run	7		2
Entering Citrus Grove	4		
Injunctions "Jook Joints" as Nuisances	21		

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	46	42 affirmed
Bond Validation Proceedings	41	
Bond Estreature Proceedings	22	
Criminal Hearings Attended (large number—no record kept)		
Habeas Corpus Hearings Attended	17	

Respectfully submitted,

L. GRADY BURTON,

State Attorney.

ELEVENTH JUDICIAL CIRCUIT

Dade
Monroe

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury
Homicide:		
First Degree	45	4
Second Degree	8	
Manslaughter	1	
Rape	3	11

Statutory Rape	2			
Embezzlement	1			
Perjury	2			
Conspiracy	5			
Accessory After the Fact	1			
Accessory Before the Fact	1			
Kidnapping for Ransom	1			
Armed Robbery	1			
Larceny	1			
Bombing	9			
Sabotage	9			
Receiving Stolen Property	1			
Exacting and Demanding Remuneration Greater than that Required by Law	5			
False Pretenses	1			
First Degree Murder				
Cases Prosecuted	Conviction	Acquittals	Nol. Pros.	
35	24	11	1	
Kidnapping Prosecuted				
1	1			
Rape Cases Prosecuted				
2		2		
Bastardy Cases Prosecuted				
4	3	1		
Homicides Investigated and Referred to County Solicitor:				
(Not presented to Grand Jury)				
Murder in the Second Degree				8
Manslaughter				7
Miscellaneous Cases				11
Murder Cases Awaiting Action of the Grand Jury				2
Investigation of:				
Armed Robbery in Connection with Murder				2
Accidental Deaths Other Than Automobile Accidents				71
Deaths from Natural Causes				69
Suicides				93
Attempted Suicides				42
Alleged Rape				15
Justifiable Homicides				32
Attempt Rape				2
Assault with Attempt to Commit Murder				7
Sodomy				1
Assault with Deadly Weapons				74
Slot Machine Investigation				1
Vice Investigation in City of Miami				1
Murder-Suicide Cases				4
First Degree Murder Cases Where Accused Has Been Indicted but not Apprehended				10

First Degree Murder Cases Awaiting Trial	4
Homicides by Unknown	4
Rape Case Awaiting Trial	1
Appeals from Lower Court to Circuit Court	46
Bond Validation Proceedings	18
Bond Estreature Proceedings	68
Habeas Corpus Hearings Attended	142
Extraditions	6
Disbarment Proceedings	4
Restoration of Sanity Hearings	18
Inquests and Preliminary Hearings Attended	135
Witnesses Appearing Before State Attorney in 1937 and 1938	575
Witnesses Appearing Before Grand Jury in 1937 and 1938	572
Total Number of Criminal Investigations During 1937 and 1938	415

Respectfully submitted,

G. A. WORLEY,

State Attorney.

TWELFTH JUDICIAL CIRCUIT

Charlotte County
Collier County
DeSoto County
Glades County

Hendry County
Sarasota County
Manatee County
Lee County

Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
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CHARLOTTE:

Homicide:

Manslaughter	1	1
Aggravated Assault	1	

Larceny:

Of Cattle	1	
Of Suitcase	1	

OTHER CASES HANDLED

Bond Validation Proceedings	Number	Disposition
	2	both validated

This report does not show a large number of investigations made by the State's Attorney personally, and for which no informations were filed, because of insufficient evidence or because misdemeanor rather than felony involved.

Respectfully submitted,

ROY D. STUBBS,

State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
COLLIER:			
Homicide:			
First Degree	1	.....	.....
Second Degree	3	.....	1
Manslaughter	1	.....	.....
Rape	1	.....	.....
Armed	2	.....	.....
Assaults	7	.....	1
Burglary and Kindred Offenses	1	.....	.....
Larceny:			
Of Automobiles	2	.....	.....
Kindred Offenses	1	.....	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Possession Fish Closed Season	3	.....	.....
Breaking and Entering	5	.....	.....
Aiding Prisoner Escape	1	.....	1
Operating Gambling House	2	.....	.....

This report does not show a large number of investigations made by the State's Attorney personally, and for which no information were filed, because of insufficient evidence or because misdemeanor rather than felony involved.

Respectfully submitted,
ROY D. STUBBS,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
DESOTO:			
Rape	2	2	.....
Burglary and Kindred Offenses	9	.....	.....
Larceny:			
Of Automobiles	1	.....	.....
Of Cattle	2	.....	1
Of Hogs	2	.....	.....
Kindred Offenses	2	.....	.....
Forgery, Counterfeiting and Kindred Offenses	7	.....	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Non-Sup. Minor Children	2	.....	.....
Rec. Stolen Property	1	.....	1
Unstamped Liquor	2	.....	.....
Assault with Intent to Murder	4	.....	1

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	1

This does not show large number of criminal investigations made by State's Attorney where no information filed because of insufficient evidence or misdemeanor.

Respectfully submitted,
ROY D. STUBBS,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
GLADES:			
Homicide:			
Third Degree	1	....	....
Assaults:			
With intent to Commit Felony	1	....	....
Larceny	1	....	....
Burglary and Kindred Offenses	5	....	....
Forgery, Counterfeiting and Kindred Offenses	1	....	....

This does not show large number of criminal investigations made by State's Attorney where no information filed because of insufficient evidence or misdemeanor.

Respectfully submitted,
ROY D. STUBBS,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
HENDRY:			
Homicide:			
First Degree	3	....	....
Second Degree	5	....	1
Robbery:			
Armed	1	....	....
Assaults:			
With intent to Commit Felony	2	....	....
Other Assaults	2	....	....
Burglary and Kindred Offenses	2	....	....
Larceny:			
Of Automobiles	1	....	....
Of Hogs	2	....	....
Kindred Offenses	1	....	....

Embezzlement	1	....	....
Forgery, Counterfeiting and Kindred Offenses	2	....	....
Resisting Arrests, etc.	2	....	....
Desertion and Withholding Support from Wife and Children	2	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Hit and Run Driver	1	....	....
Accessory After Fact	1	....	....
Assault Intent to Murder	1	....	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	....
Bond Validation Proceedings	3	....

This report does not show a large number of investigations made by the State's Attorney personally, and for which no information were filed, because of insufficient evidence or because misdemeanor rather than felony involved.

Respectfully submitted,
ROY D. STUBBS,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
LEE:			
Homicide:			
First Degree	2	....	....
Second Degree	2	....	....
Manslaughter	5	....	2
Robbery:			
Armed	2	....	....
Assaults:			
With intent to Commit Felony	4	....	....
Arson and Kindred Offenses	3	....	....
Burglary and Kindred Offenses	10	....	....
Larceny:			
Of Automobiles	4	....	1
Of Cattle	5	....	1
Grand Larceny	9	....	1
False Pretenses and Kindred Offenses	1	....	....
Forgery, Counterfeiting and Kindred Offenses	2	....	....
Trespasses, Injuring Buildings, etc.	1	....	....
Resisting Arrest, etc.	2	....	....

Adultery, Fornication, etc.	1	....	....
Desertion and Withholding Support from Wife and Children	2	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Breaking and Entering	12	....	1
Operating Lottery	6	....	....
Receiving Stolen Property	2	....	....

(This report does now show a large number of investigations made by the States Attorney personally, and for which no information was filed because of insufficient evidence or because misdemeanor rather than felony involved.)

Respectfully, submitted,
ROY D. STUBBS,
 State Attorney.

MANATEE—NO REPORT

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
SARASOTA:			
Homicide:			
First Degree	1	....	....
Second Degree	3	....	....
Third Degree	4	....	....
Robbery:			
Armed	2	....	1
Unarmed	1	....	....
Assaults:			
With intent to Commit Felony	4	....	....
Other Assaults	1	....	....
Burglary and Kindred Offenses	9	....	1
Larceny:			
Of Automobiles	4	....	....
Of Cattle	1	....	....
Kindred Offenses	7	....	....
Embezzlement	2	....	....
Forgery, Counterfeiting and Kindred Offenses	3	....	....
Perjury	1	....	....
Adultery, Fornication, etc.	1	....	....
Desertion and Withholding Support from Wife and Children	3	....	....

**Miscellaneous Crimes Not Otherwise
Enumerated:**

Setting up Lottery	2	.....	.....
Receiving Stolen Property	2	.....	.....
Possessing Unstamped Liquor	9	.....	.....
Possessing Lottery Tickets	1	.....	.....

This report does not show a large number of investigations made by the State's Attorney personally, and for which no information were filed, because of insufficient evidence or because misdemeanor rather than felony involved.

Respectfully submitted,
ROY D. STUBBS,
State Attorney.

THIRTEENTH JUDICIAL CIRCUIT

Hillsborough County

A. Grand Jury	Indictments	No True Bills
1. Rape	3	.....
2. Homicide 1st degree	25	2
2nd degree	1 Cert. to Crim. Ct. of Record	
3. Gambling & Op. Lottery	17 Cert. to Crim. Ct. of Record	
4. Nonfeasance of Public Officials	16 Cert. to Crim. Ct. of Record	
5. Usury	12 Cert. to Crim. Ct. of Record	

B. Trials	Verdicts: Guilty - N. G. Nolle Pros. Pending			
1. Murder	17	2	2	4
2. Rape	2	.....	.....	1
3. By special assignment of the Governor prosecuted 5 persons charged with second degree murder, Oct. 1937, and 5 persons charged with kidnapping, June 1938, in the Criminal Court of Record, Polk County, Florida.				

C. Preliminary Hearings Attended:

1. Bastardy 3; 2. Murder 8; 3. Rape 1; 4. Coronors Inquests 15.

D. Investigations not included above in which the testimony, recorded and transcribed, established justifiable homicide, suicide or death by natural causes; and in case of rape and bastardy, insufficient evidence to warrant further prosecution:

1. Homicide 25; 2. Rape 7; 3. Bastardy 9.

E. Other cases concluded, not shown above:

1. Habeas Corpus 26; 2. Mandamus 12; 3. Restoration to Sanity 14;
4. Bond Validation proceedings 10; 5. Investigation in suit to enjoin use of voting machines.

F. Special investigations conducted or assisted in by State Attorney or Assistant State Attorney, each of which required more than 30 days:

1. Grand Jury investigation of primary election, 1938, evidence being turned over to County Solicitor for further investigation, resulting in informations being filed against 20 election officials.
 2. Complete investigation of salary buyers over period of several months resulting in the indictment of 12 persons operating 6 firms doing business in Tampa.
 3. Gambling investigation by Grand Jury.
- G. Miscellaneous not included above:
1. Handled collection items for Florida State Hospital.
 2. Reported on approximately 7 investigations made at the request of the Governor.
 3. Assisted officers in 3 unsolved murder cases.

Respectfully submitted,
J. REX FARRIOR,
 State Attorney.

FOURTEENTH JUDICIAL CIRCUIT

Bay County	Holmes County
Calhoun County	Jackson County
Gulf County	Washington County

	Informations and Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
BAY:			
Homicide:			
First Degree	3	....	....
Second Degree	1	....	1
Manslaughter	1	3	....
Rape	1	....	1
Robbery			
Armed	2	....	1
Assaults:			
With intent to Commit Felony	8	4	3
Other Assaults .....	....	1	....
Arson and Kindred Offenses .....	....	1	....
Burglary and Kindred Offenses	25	2	4
Larceny:			
Of Automobiles	5	....	....
Of Cattle	1	....	....
Kindred Offenses	10	3	3
Embezzlement	3	....	1
False Pretenses and Kindred Offenses	1	2	....
Forgery, Counterfeiting and Kindred Offenses	12	1	1
Trespasses, Injuring Buildings, etc.	2	....	....

Offenses Against Public Revenue	2	....	....
Adultery, Fornication, etc.	1	1	....
Bigamy	2	....	....
Crime Against Nature .....	....	1	....
Desertion and Withholding Support from Wife and Children	21	7	3
Miscellaneous Crimes Not Otherwise Enumerated:			
Drunk Driving	2	....	....
Selling Liquor	4	2	1
Disposing of Mortgaged Property..	7	....	1
Receiving Stolen Property	1	1	1
Narcotic	2	....	....

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	4	....
Criminal Hearings Attended	26	....

Respectfully submitted,
JOHN H. CARTER, Jr.,
State Attorney.

	Informations and Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
CALHOUN:			
Rape	1	....	....
Assaults:			
With intent to Commit Felony ....	....	1	....
Other Assaults	3	11	1
Burglary and Kindred Offenses	3	2	....
Larceny:			
Of Cattle	1	1	....
Kindred Offenses	1	4	....
False Pretenses and Kindred Offenses	....	1	....
Trespasses, Injuring Buildings, etc.	3	....	1
Resisting Arrest, etc.	1	....	....
Violation Liquor Law, Second Offense	1	....	....
Desertion and Withholding Support from Wife and Children	1	1	....
Incest	1	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Hit and Run Driving	1	....	....
Shooting Animal	2	....	2

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	3	---
Criminal Hearings Attended	4	---

Respectfully submitted,
 JOHN H. CARTER, Jr.,
 State Attorney.

	Informations and Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
GULF:			
Homicide:			
First Degree	2	2	1
Manslaughter	---	1	---
Robbery			
Armed	1	---	1
Assaults:			
With intent to Commit Felony	2	1	---
Other Assaults	4	---	---
Arson and Kindred Offenses	1	---	---
Burglary and Kindred Offenses	3	---	1
Larceny:			
Of Automobiles	2	---	---
Kindred Offenses	4	1	2
Embezzlement	2	1	2
False Pretenses and Kindred Offenses	1	1	---
Forgery, Counterfeiting and Kindred			
Offenses	1	2	---
Trespasses, Injuring Buldings, etc.	1	---	---
Offenses Against Public Revenue	1	---	---
Perjury	---	1	---
Resisting Arrest, etc.	2	---	---
Adultery, Fornification, etc.	1	1	---
Desertion and Withholding Support			
from Wife and Children	1	---	---
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Disposing of Mortgaged Property..	1	---	---
Violation of Liquor Law	1	---	---

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	---

Bond Validation Proceedings	6	---
Criminal Hearings Attended	3	---

Respectfully submitted,
JOHN H. CARTER, Jr.,
 State Attorney.

	Informations and Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
HOLMES:			
Homicide:			
First Degree	3	1	---
Rape	1	---	1
Assaults:			
With intent to Commit Felony	7	---	1
Other Assaults	2	1	---
Arson and Kindred Offenses	1	1	---
Burglary and Kindred Offenses	5	---	---
Larceny:			
Of Cattle	10	3	4
Kindred Offenses	4	3	---
Embezzlement:			
Public Officers	1	1	1
Other Kinds	3	---	---
False Pretenses and Kindred Offenses	1	1	---
Forgery, Counterfeiting and Kindred			
Offenses	3	1	---
Trespasses, Injuring Buildings, etc.	---	2	---
Misconduct by Officers	---	1	---
Resisting Arrest, etc.	1	---	---
Conspiracy	---	1	---
Adultery, Fornification, etc.	2	4	---
Bigamy	---	1	---
Desertion and Withholding Support			
from Wife and Children	3	---	---
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Selling Whiskey	2	---	---
Disposing of Mortgaged Property..	---	1	---
Killing Animal	1	1	---

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	2	---
Criminal Hearings Attended	16	---

Respectfully submitted,
JOHN H. CARTER, Jr.,
 State Attorney.

	Informations and Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
JACKSON:			
Homicide:			
First Degree	10	3	2
Second Degree	2	.....	.....
Manslaughter	12	3	3
Robbery			
Armed	7	.....	.....
Assaults:			
With intent to Commit Felony	14	3	3
Other Assaults	1	2	.....
Arson and Kindred Offenses	1	.....	.....
Burglary and Kindred Offenses	35	2	.....
Larceny:			
Of Automobiles	7	.....	.....
Of Cattle	11	3	1
Kindred Offenses	25	2	5
Embezzlement	5	1	1
False Pretenses and Kindred Offenses	1	.....	.....
Forgery, Counterfeiting and Kindred Offenses	18	2	1
Trespasses, Injuring Buildings, etc.	1	.....	1
Offenses Against Public Revenue	5	.....	.....
Perjury	2	.....	1
Resisting Arrest, etc. ....	.....	1	.....
Adultery, Fornication, etc.	1	2	.....
Incest	1	.....	.....
Desertion and Withholding Support from Wife and Children	20	4	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Using Milk Bottles of Another	1	.....	.....
Permitting Minor to Play Slot Machines	1	.....	1
Receiving Stolen Property .....	.....	2	.....
Selling Liquor	29	2	2
Disposing of Mortgaged Property	6	3	1
Practicing Without License	1	.....	.....
Cutting Timber on Tax Lands	2	1	.....
Shooting Animal	1	.....	1
Hit and Run	2	3	.....
Selling Lottery Tickets	1	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	.....

Bond Validation Proceedings	6	.....
Criminal Hearings Attended	35	.....

Respectfully submitted,

JOHN H. CARTER, Jr.,

State Attorney.

	Informations and Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
WASHINGTON:			
Homicide:			
First Degree	2	.....	.....
Manslaughter	2	.....	.....
Mayhem .....	.....	1	.....
Rape	1	.....	1
Robbery			
Armed	1	.....	.....
Assaults:			
With intent to Commit Felony	5	6	.....
Other Assaults	5	1	1
Arson and Kindred Offenses	3	.....	1
Burglary and Kindred Offenses	9	.....	.....
Larceny:			
Of Cattle	8	6	2
Kindred Offenses	6	3	.....
Embezzlement	4	.....	1
False Pretenses and Kindred Offenses	1	1	.....
Forgery, Counterfeiting and Kindred Offenses	4	.....	.....
Trespasses, Injuring Buildings, etc. ....	.....	4	.....
Resisting Arrest, etc.	1	.....	.....
Adultery, Fornication, etc.	2	4	1
Bigamy	1	.....	.....
Violation Liquor Law, Second Offense	.....	1	.....
Desertion and Withholding Support from Wife and Children	10	5	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Drunk Driving	2	.....	.....
Changing Animal Mark	1	1	.....
Disposing of Mortgaged Property	3	1	.....
Selling Liquor	4	3	.....
Shooting Animal	2	1	.....

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	1	.....
Bond Estreature Proceedings	16	.....

Respectfully submitted,
JOHN H. CARTER, Jr.,
 State Attorney.

FIFTEENTH JUDICIAL CIRCUIT

Broward County

I am only able at this late date to compile a partial report with reference to the business handled by me in Broward County for the past two years. I am unable to follow the form sent, but believe this form of report will answer the desired purpose.

1937:

	Guilty	Not Guilty	Noll Prossed
Breaking and Enterings	11	.....	1
Grand Larceny	7	.....	.....
Illicit Carnal Intercourse	2	.....	.....
Larceny Automobile	5	.....	.....
Armed Robbery .....	.....	1	.....
2nd. Degree Murder .....	.....	1	.....
Manslaughter .....	.....	1	.....
Assault to Rape .....	.....	.....	1
Assault to Murder	2	.....	.....
Larceny of Cow .....	.....	.....	1
False Pretenses .....	.....	1	1
1st. Degree Murder	2	.....	2
Unarmed Robbery	1	.....	.....
Uttering Forged Instruments	5	.....	.....
Receiving Stolen Property	1	.....	1
Total .....	.....	.....	47 prosecutions
Convictions .....	.....	.....	36
Acquittals .....	.....	.....	4
Dismissals .....	.....	.....	7

1938:

Informations by State Attorney or Indictments by the Grand Jury were filed against 60 persons, 46 of whom were convicted. Fifteen of the total number pleaded not guilty, ten being convicted and five acquitted.

Of the 46 convictions, 25 were sentenced to the state prison, 12 to the county jail, four sentences were withheld, and four remanded to juvenile court. One defendant was fined.

Eight of the 60 cases docketed were nolle prossed.

Three life sentences were given during 1938, two for murder and one for rape.

Six first or second degree murder charges were tried by juries, four being found guilty. There were eight manslaughter cases, four pleading guilty, one found guilty by a jury and two acquitted, and one nolle prossed.

Other charges included: Grand Larceny, 12; breaking and entering, 12; armed robbery, 2; embezzlement, 1; crime against nature, 1; obtaining money under false pretenses, 1; assault with intent to kill, 1; forgery, 3; larceny of cattle, 2; larceny of automobiles, 5; mayhem, 1; robbing groves at night, 2; illegal possession of marihuana, 1.

This report does not include Appeals; Bond Validation Proceedings; Bond Estreature Proceedings; Criminal Hearings Attended, or Habeas Corpus Hearings Attended.

Respectfully submitted,

LOUIS F. MAIRE,

State Attorney.

XII.

COUNTY SOLICITORS

REPORTS OF COUNTY SOLICITORS, COVERING CRIMINAL COURTS
OF RECORD AND COURTS OF CRIME, FOR YEARS 1937-38
UNDER SECTION 132, C. G. L.

Dade County
Duval County
Escambia County
Hillsborough County

Monroe County
Orange County
Palm Beach County
Polk County

DADE—CRIMINAL COURT:

Offense	No Information	Nolle Proseque	Convictions and Guilty Pleas	Acquittals
Abortion	.....	.....	.....	.....
Arson	2	.....	1	1
Assaults	7	19	49	3
Adultery	4	4	4	.....
Bigamy	1	4	3	.....
Bribery	1	1	.....	.....
Breaking and Entering	29	76	287	10
Crime Against Nature	3	6	12	5
Desertion	18	61	5	.....
Embezzlement	12	15	43	6
Extortion	1	1	.....	1
False Pretense	22	4	13	2
Forgery	4	18	48	2
Operating a Gambling House	13	33	39	5
Murder, Second Degree	1	1	5	2
Manslaughter	5	9	17	9
Larceny, Auto	1	18	94	4
Larceny	15	28	143	7
Receiving Stolen Property	13	39	42	5
Lottery	.....	2	4	.....
Mayhem	.....	3	2	.....
Miscellaneous	18	9	38	1
Narcotic	4	4	11	1
Liquor	.....	7	47	.....
Obscenety	1	3	6	.....
Perjury	.....	4	3	.....
Rape	1	2	2	2
Rape, Assault	4	.....	2	2
Robbery	17	28	72	15

Robbery, Assault	10	2
Shooting Into House	2	3
Totals	199	400
	1005	85
Total cases disposed of in Criminal Court of Record for two year period beginning January 1, 1937, ending January 1, 1939		
		1,689
Total cases disposed of in Court of Crimes for above named period..		
		2,421
Grand Total		4,110

DADE—COURT OF CRIMES:

Offense	No Information	Nolle Proseque	Convictions and Guilty Pleas	Acquittals
Assault and Battery	8	38	102	20
Aggravated Assault	2	34	66	12
Affray			3	
Beating Board Bill		6	6	
Beauty Culture			8	
Conspiracy		2	4	
Contributing to Delinquency of a Minor		10	8	
Contempt			18	
Drunk	14		310	
Doing Business Without a License	4	24	110	2
Driving Drunk		8	58	
Embezzlement	4	12	8	
Election Frauds		2	27	6
Fornification		2	2	
Gambling		4	84	
Game Law		6	32	
Indecent Exposure			12	3
Petit Larceny	14	20	252	10
Liquor	4	12	6	6
Lien Laws		4		
Motor Laws		12	42	
Milk Laws		4		
Malicious Mischief	4	8	8	
Miscellaneous	2	32	104	4
Nuisance			4	
Obstructing Highway			3	
Profanity		8	18	
Reckless Driving	2	10	199	4
Resisting Arrest		3		1
Trespass	4	12	10	4
Receiving Stolen Property		2	6	

Insurance Laws	2	---	---
Vagrancy	2	10	248
Using Motor Vehicle Without Owner's Consent ..	---	2	16
Usuary	---	9	10
Weapons	---	23	76
Worthless Check	16	26	52
Sub Totals	80	347	1,912
Total	2,421		
Total cases disposed of in Court of Crimes for two year period beginning January 1, 1937, ending January 1, 1939			
			2,421
Total cases disposed of in Criminal Court of Record for above named period			
			1,689
Grand Total			4,110

From November, 1937, through the year 1938, the Solicitor participated in several important appeals and applications for Writs of Habeas Corpus.

HABEAS CORPUS

In the Supreme Court, *George Miller* brought a Habeas Corpus to determine the venue of prosecution for offense under the Absentee Ballot Law (See *infra*: Beach Vote Fraud Case). The jurisdiction of the local courts was held to exist.

J. H. Wendler brought a Habeas Corpus before the Circuit Judge attacking the validity of all informations filed by the County Solicitor on the ground that no sworn testimony was offered before him in *Wendler's* case. The court held that he could not maintain his attack and remanded him to the sheriff.

Carroll D. King brought a Habeas Corpus before the Circuit Judge that the form of the subpoena under which he was required to testify was insufficient and therefore he could not be prosecuted for perjury. This was decided in his favor. He was subsequently charged as herein-after stated.

Albert G. Hickland prosecuted in the Miami Beach Vote Fraud case (*infra*) contended that he was not liable to prosecution by reason of the Supreme Court's decision in the *Hemmings'* case. The Circuit Judge overruled this contention.

In *Glynn's* case it was sought to obtain from the Solicitor, by Habeas Corpus, the evidence upon which the information was based. The court denied the application and held that the solicitor could not be compelled to divulge the information.

In the *Mitchell* case, on Habeas Corpus, the defendant contended that he could not be guilty of bribery because there was no applicable statute and this contention was agreed in by the Circuit Judge, which was later affirmed by the Supreme Court in the City Commission cases.

In *Beasley* case the Supreme Court held that Beasley had been guilty of violation of the Usury Laws and remanded him to the custody of the sheriff.

In all these cases the County Solicitor's office participated.

APPEALS

Wendler appealed the judgment in the Habeas Corpus case above and the judgment was affirmed—the Supreme Court saying he had waived the defect which he claimed existed in his information. The case is now pending on re-hearing.

In the case of *Carroll D. King*, the Solicitor took an appeal from the Habeas Corpus ruling and the Supreme Court reversed it holding that King was guilty of perjury and that he had waived the defect in the subpoena.

In the case of *Anderson vs. State*, the Solicitor presented an appeal to the Supreme Court to reverse—a prior case holding it was necessary to have certain testimony in each case before him and held that he could prosecute an affidavit filed before a Justice of Peace, thus cutting out a great amount of red tape and saving witnesses fees and the cost of issuing and serving subpoenas, which had theretofore been made necessary.

In *Mitchell's* case—an adverse decision by the Supreme Court in the cases involving the City Commissioners resulted in Mitchell to be held not to be guilty of bribery.

In *Hemmings* case—the Supreme Court held that Hemmings could not be prosecuted for perjury, because he had been interrogated by the Grand Jury at the time he was suspected of the offense for which he was subsequently indicted by that body. The solicitor has applied for re-hearing in the case and the cause has been set for oral argument on the re-hearing on February 28.

In all these appeals the Solicitor's office personally participated.

BEACH VOTE FRAUD CASE

The case involved an attempt to influence an election on Miami Beach by casting illegal ballots—was investigated and a conviction obtained in the case of George Newman, and a prosecution instituted against Albert G. Hickland, which is still pending. Over 100 witnesses were examined for knowledge of the offense—over 100 pieces of documentary evidence were examined—inspected and submitted for examination—to

the Federal Bureau of Investigation and technical advice and assistance from the Federal Bureau of Investigation were procured, which resulted in obtaining 23 convictions and the filing of many more informations.

Respectfully submitted,
ROBT. R. TAYLOR,
County Solicitor.

	Informations Filed	Verdicts of Guilty	Verdicts of Not Guilty
DUVAL—CRIMINAL COURT OF RECORD:			
Homicide:			
Second Degree	19	....	2
Manslaughter	33	1	15
Mayhem	4	....	....
Ass-Rape	19	1	2
Robbery:			
Armed	57	3	9
Unarmed	1	....	....
Assaults:			
With intent to Commit Felony	175	12	16
Other Assaults	190	8	16
Libel and Defamation	2	....	....
Sending Threatening Communications .....	....	1	....
Arson and Kindred Offenses	11	....	3
Burglary and Kindred Offenses	498	6	9
Larceny: (Grand) .....	....	....	13
Of Automobiles	18	....	1
Of Cattle	8	....	1
Kindred Offenses	919	16	22
Embezzlement	56	8	5
False Pretenses and Kindred Offenses	28	2	5
Forgery, Counterfeiting and Kindred Offenses	82	....	1
Trespasses, Injuring Buildings, etc.	42	1	5
Resisting Arrest, etc.	10	3	1
Conspiracy	2	1	....
Adultery, Fornication, etc.	17	1	6
Incest	1	....	....
Bigamy	2	3	....
Crime Against Nature	12	3	1
Violation Liquor Law	99	1	14
Desertion and Withholding Support from Wife and Children	56	8	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Vagrancy	11	3	....

Careless & Reckless Driving, etc.....	1237	72	18
Gambling	17	5	2
Violation Fla. Drug Law	4	4	....
Doing Business Without License	39	6	1
Drunk and Disorderly	29	25	1
Worthless Checks	204	9	3
Miscellaneous	666	30	22
Total	4,568	233	194

Respectfully submitted,
L. D. HOWELL,
County Solicitor.

	Informations Filed by Co. Sol'r.	No Prosecution Returned by Co. Sol'r.	Verdicts of Not Guilty Returned
ESCAMBIA—COURT OF RECORD:			
Homicide:			
Second Degree	4	2	3
Manslaughter	10	....	5
Robbery:			
Armed	6	7	....
Unarmed	1	....	....
Assaults:			
With intent to Commit Felony	15	....	5
Other Assaults	322	151	48
Burglary and Kindred Offenses	79	10	8
Larceny:			
Of Automobiles	1	....	....
Of Cattle	8	....	2
Kindred Offenses	202	33	19
Embezzlement	16	6	3
False Pretenses and Kindred Offenses	11	4	3
Forgery, Counterfeiting and Kindred Offenses	38	5	....
Trespasses, Injuring Buildings, etc.	16	12	3
Perjury	4	1	1
Resisting Arrest, etc.	5	1	2
Adultery, Fornication, etc.	16	27	1
Bigamy	2	....	....
Crime Against Nature	1	1	....
Violation Liquor Law	183	8	4
Desertion and Withholding Support from Wife and Children	7	8	....

Miscellaneous Crimes Not Otherwise

Enumerated:

Drunkenness	632	182	9
Malicious Mischief	35	33	6
Driving While Drunk	25	7	3
Reckless Driving & Leaving Scene	103	45	10
Carrying Concealed Weapon	20	5	1
Gambling	6	70	---
Disp. of Property Under Lien	7	5	---
Oper. Auto Without Lights, Tag and Permit	31	9	2
Vagrancy	47	11	---
Obscene Language	19	30	---
Violation of Game Laws	9	---	---

OTHER CASES HANDLED

	Number	Disposition
Appeals from Court of Record to Supreme Court	4	---
Other Cases Not Enumerated Handled by County Solicitor	6 Injunctions	Granted

Respectfully submitted,
FORSYTH CARO,
 County Solicitor.

	Informations Filed	Verdicts of Guilty	Verdicts of Not Guilty
HILLSBOROUGH—CRIMINAL COURT OF RECORD:			
Homicide:			
Second Degree	3	1	2
Manslaughter	17	11	6
Robbery:			
Armed	11	11	---
Unarmed	4	4	---
Assaults:			
With intent to Commit Felony	18	15	3
Other Assaults	100	85	15
Arson and Kindred Offenses	2	2	---
Burglary and Kindred Offenses	110	102	8
Larceny:			
Of Automobiles	27	25	2
Of Cattle	3	2	1
Kindred Offenses	212	201	11
Embezzlement	27	21	6

False Pretenses and Kindred Offenses	6	4	2
Forgery, Counterfeiting and Kindred Offenses	51	48	3
Trespasses, Injuring Buildings, etc.	6	5	1
Perjury	1	1	---
Adultery, Fornication, etc.	1	1	---
Incest	1	1	---
Bigamy	2	1	1
Crime Against Nature	4	4	---
Violation Liquor Law	123	103	20
Desertion and Withholding Support from Wife and Children	7	5	2
Miscellaneous Crimes Not Otherwise Enumerated:			
Attempts to Commit Felony	13	12	1
Entering Without Breaking	21	20	1
Traffic Violations	13	10	3
Driving While Intoxicated	93	88	5
Being Drunk	93	91	2
Reckless Driving	56	46	10
Using Automobile Without Consent of Owner	18	18	---
Carnal Intercourse with Unmarried Female Under 18	3	1	2
Gambling Law Violations	28	21	7
Possession of Burglar Tools	1	1	---
Escape	11	11	---
Burning Woods	3	2	1
Carrying Concealed Weapon	6	6	---
Selling and Displaying Obscene Literature	1	1	---
Obtaining Lodging with Intent to Defraud	2	1	1
Contributing to Delinquency of Minor	2	1	1
Tampering with Gas Meter	2	2	---
Injuring and Destroying Personal Property	2	2	---
Pharmacy Law Violations	3	2	1
Using Profane Language in Public Place	2	2	---
Procuring Girls for Immoral Purposes	1	---	1
Removing and Disposing of Property Under Lien	10	8	2
Slot Machine Law Viol.	4	4	---
Vagrancy	44	44	---
Beating Way on Train	88	88	---

Worthless Checks	21	20	1
Beauty Culture Law Viol.	1	....	1
Dentistry Law Viol.	2	1	1
Election Law Viol.	2	....	2
Registration Law Viol.	1	1	....
Fish Law Viol.	2	2	....
Game Law Viol.	1	1	....
Receiving Stolen Property	12	8	4
Culpable Negligence	1	1	....
Indecent Exposure	3	3	....
Narcotic Law Viol.	3	2	1
Usury	2	2	....

Respectfully submitted,
JOSEPH E. WILLIAMS,
 County Solicitor.

	Informations Filed	Nolle Prossed	Verdicts of Not Guilty
MONROE—CRIMINAL COURT OF RECORD:			
Rape	2	....	1
Robbery:			
Armed	1	....	....
Unarmed	1	....	....
Assaults:			
With intent to Commit Felony	4	....	1
Other Assaults	54	9	3
Sending Threatening Communications	1	....	....
Burglary and Kindred Offenses	11	1	1
Larceny	24	1	3
Embezzlement	1	1	....
False Pretenses and Kindred Offenses	6	1	....
Forgery, Counterfeiting and Kindred Offenses	1	....	....
Trespasses, Injuring Buildings, etc.	9	2	....
Resisting Arrest, etc.	2	....	....
Desertion and Withholding Support from Wife and Children	8	3	2
Miscellaneous Crimes Not Otherwise Enumerated:			
Driving a Motor Vehicle While Under the Influence of Liquor....	16	....	....
Reckless Driving	6	....	....
Violation of Beverage Laws	24	6	5
Violation of Sponging Laws	7	"Defendants obtained Habeas Corpus"	

Gambling Violations	21	4	....
Issuing Worthless Checks	2	....	....
Receiving Stolen Property	2	....	....
Contributing to the Delinquency of Minors	2	....	....
Vagrancy	26	1	1
Profane and Obscene Language	6	3	....
Violation of License Laws	11	....	....
Operating an Overloaded Truck Over the Public Highways	2	....	....
Obtaining Food and Lodging with Intent to Defraud	2	1	....
Drunkness	3	....	....
Possession of Crawfish Under the Legal Weight	2	....	1
Unlawful Discharge of Fire Arms	2	....	....
Temporarily Using the Property of Another	2	....	....
Leaving the Scene of an Accident Without Stopping	1	....	....
Malicious Mischief	4	....	....
Causing an Affray	4	....	....
Killing and Possessing Migratory Birds	1	....	....

Respectfully submitted,
ALLAN B. CLEARE, Jr.,
County Solicitor.

ORANGE—CRIMINAL COURT OF RECORD:

Offense	Informations Filed	Verdicts of Not Guilty
1. Homicide Second Degree	4	....
2. Manslaughter	14	5
3. Assault with intent to Commit Murder	35	1
4. Robbery	18	....
5. Forgery	31	1
6. Breaking and Entering with intent to Commit a Felony or Misdemeanor	119	2
7. Grand Larceny	42	3
8. Receiving Stolen Goods	18	....
9. Larceny of Auto	12	....
10. Embezzlement	4	1
11. Incest	2	....
12. Aggravated Assault	25	5
13. Assault and Battery	21	2
14. Affray	25	1
15. Petit Larceny	61	2

16. Desertion and Non-Support	8	...
17. Worthless Check	35	2
18. Temp. Use of Pers. Prop.	4	...
19. Gambling	10	...
20. Traffic Violations	321	5
21. Other Misdemeanors	211	2
	1020	32
	Number	
Preliminary Hearings Attended	23	
Habeas Corpus Hearings Attended	12	

Respectfully submitted,
O. RAYMOND ELLARS,
County Solicitor.

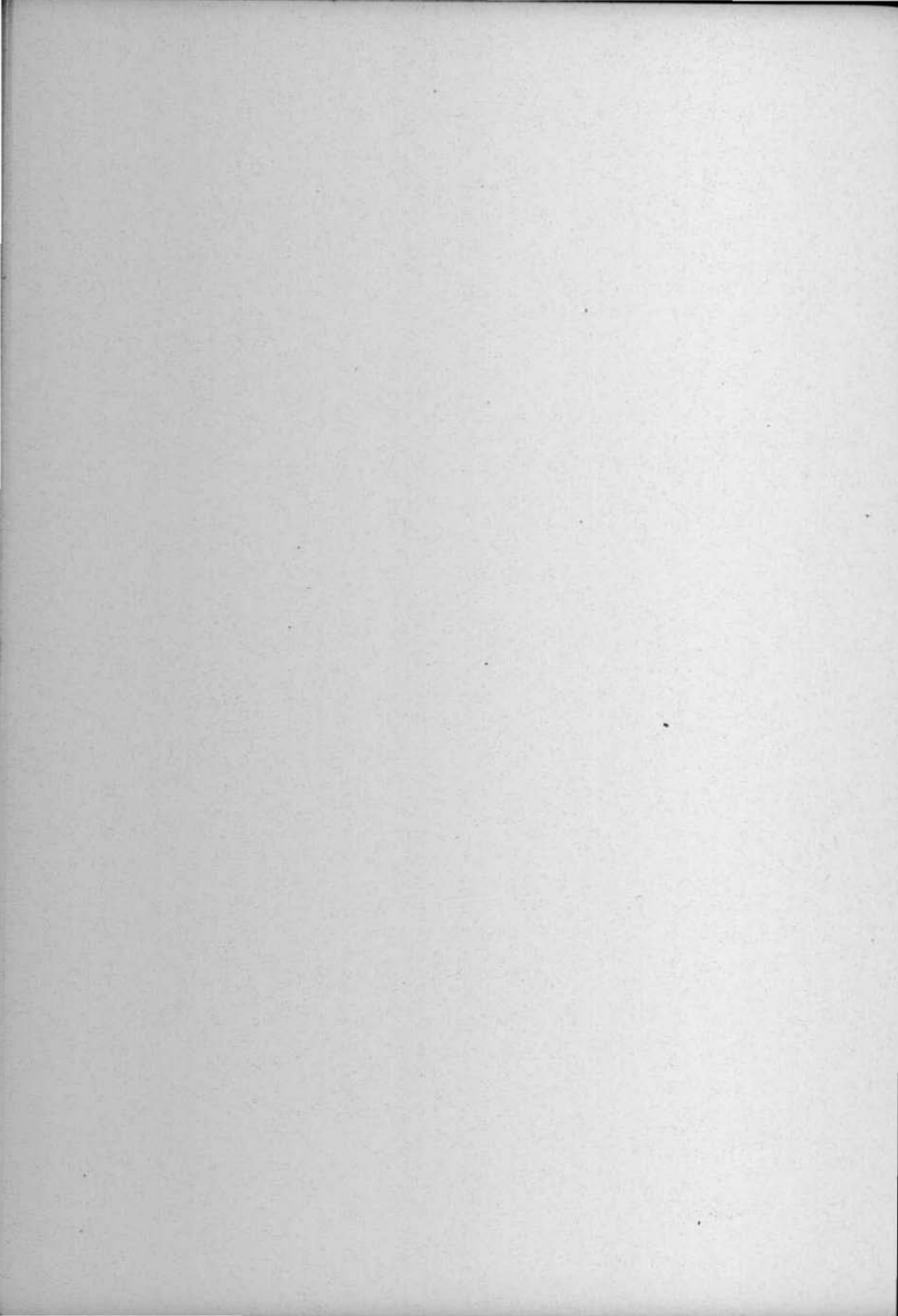
	Informations Filed	Open Cases	Verdicts of Not Guilty
PALM BEACH—CRIMINAL COURT OF RECORD:			
Homicide:			
Second Degree	8	2	1
Manslaughter	3	1	1
Mayhem	1	...	...
Robbery:			
Armed	13	1	1
Unarmed	3	...	3
Aiding Prisoner to Escape	2	...	...
Assaults:			
Accessory to Felony	9	...	...
With intent to Commit Felony	68	6	3
Other Assaults	104	3	2
Indecent Expos.	3	...	...
Ill. Cut. Timber	15	13	...
Burglary and Kindred Offenses	203	7	9
Larceny: Grand	50	5	2
Of Automobiles	35	9	1
Of Dog	3	2	...
Kindred Offenses, Petit Larceny	104	5	2
Embezzlement:			
Public Officers	2	...	...
Other Kinds	13	7	...
False Pretenses and Kindred Offenses	3	1	...
Forgery, Counterfeiting and Kindred Offenses	65	13	...
Trespasses, Injuring Buildings, etc.	5	...	...
Vagrancy	44	...	...

Perjury	4	.....	1
Unlaw. Prac. Medicine	14	1	.....
Viol. Election Laws	3	1	.....
Abortion	2	.....	.....
Temporarily Using Prop. Another	22	1	2
Adultery, Fornication, etc.	12	.....	.....
Poss. Obscene Literature	2	.....	.....
Bigamy	3	1	.....
Lewd Conduct, etc.	4	.....	.....
Crime Against Nature	4	1	1
Violation Liquor Law	34	11	.....
Desertion and Withholding Support from Wife and Children	68	14	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Gambling	27	5	.....
Concealed Weapons	25	1	.....
Passing School Bus	6	.....	.....
Reckless Driving	112	2	1
Receiving Stolen Property	11	1	1
Driving While Drunk	55	.....	.....
Drunkenness	75	2	.....
Malicious Mischief	3	1	.....
Violation Fish and Game Laws	32	1	1
Improper License Overloaded Truck	30	.....	.....
Miscellaneous	24	11	2

Respectfully submitted,
W. E. ROEBUCK,
County Solicitor.

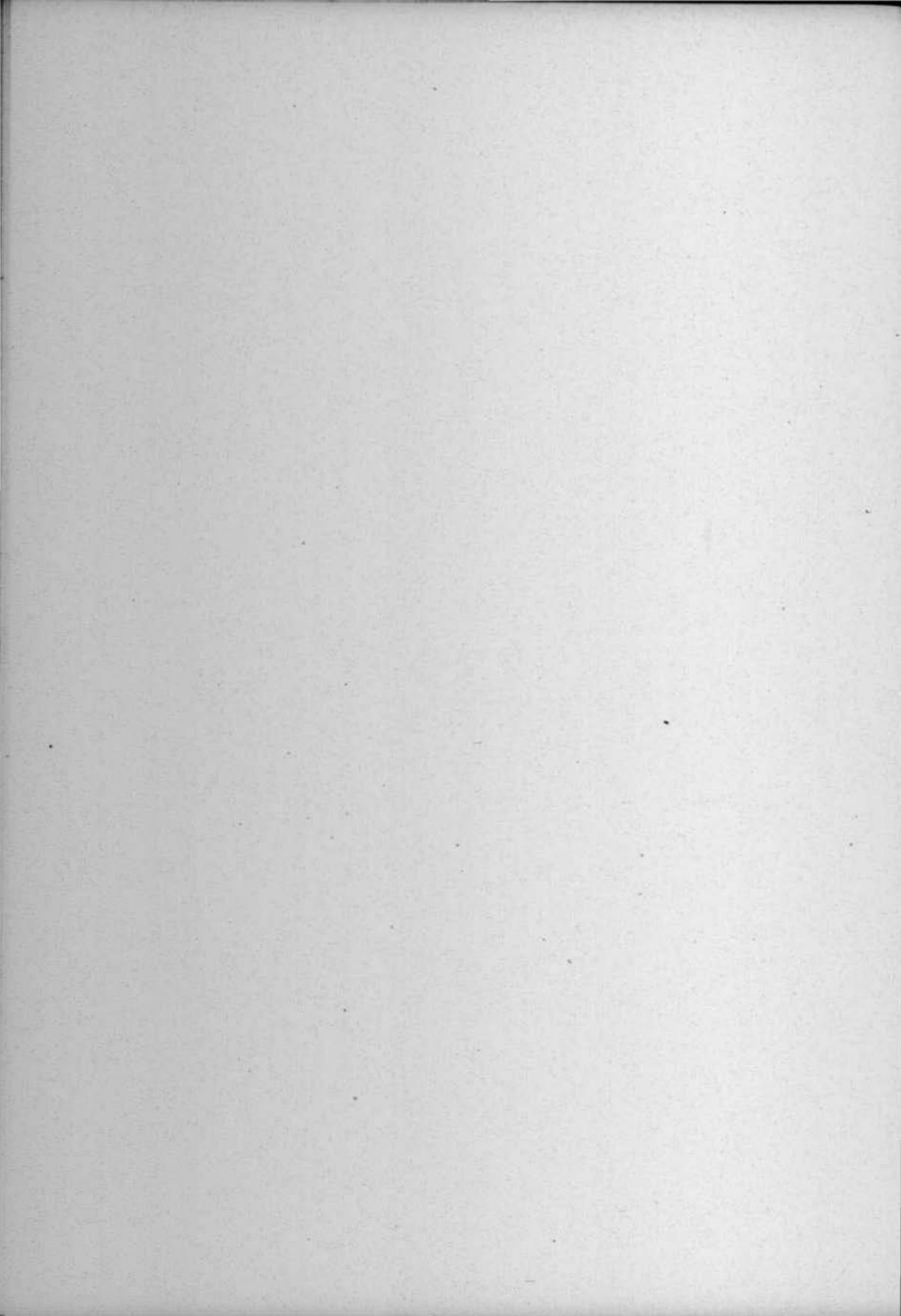
POLK COUNTY—CRIMINAL COURT OF RECORD.

NO REPORT.



PART II

Opinions



PREFACE

Part II of this report contains copies of certain opinions rendered by my predecessor, the late Honorable Cary D. Landis, from January 1, 1937, up to May 10, 1938, and by me from May 16, 1938, to December 31, 1938.

A number of opinions have been rendered during the past two years that are not included in this report. I have sought to eliminate from the report opinions of a purely local nature or application, as well as opinions that for one reason or another cannot be used in the future.

The arrangement of the opinions is by subjects, alphabetically arranged, and any subject can readily be found by reference to the Table of Contents appearing on the next page, or by the index found in the back of this volume.

I have also added to the Index a Table of Statutes and Constitutional provisions cited or referred to in the opinions. This table will save much time in using the report.

GEORGE COUPER GIBBS,
Attorney General of Florida.

Tallahassee, Florida,
January First, A. D.,
Nineteen Hundred Thirty Nine.

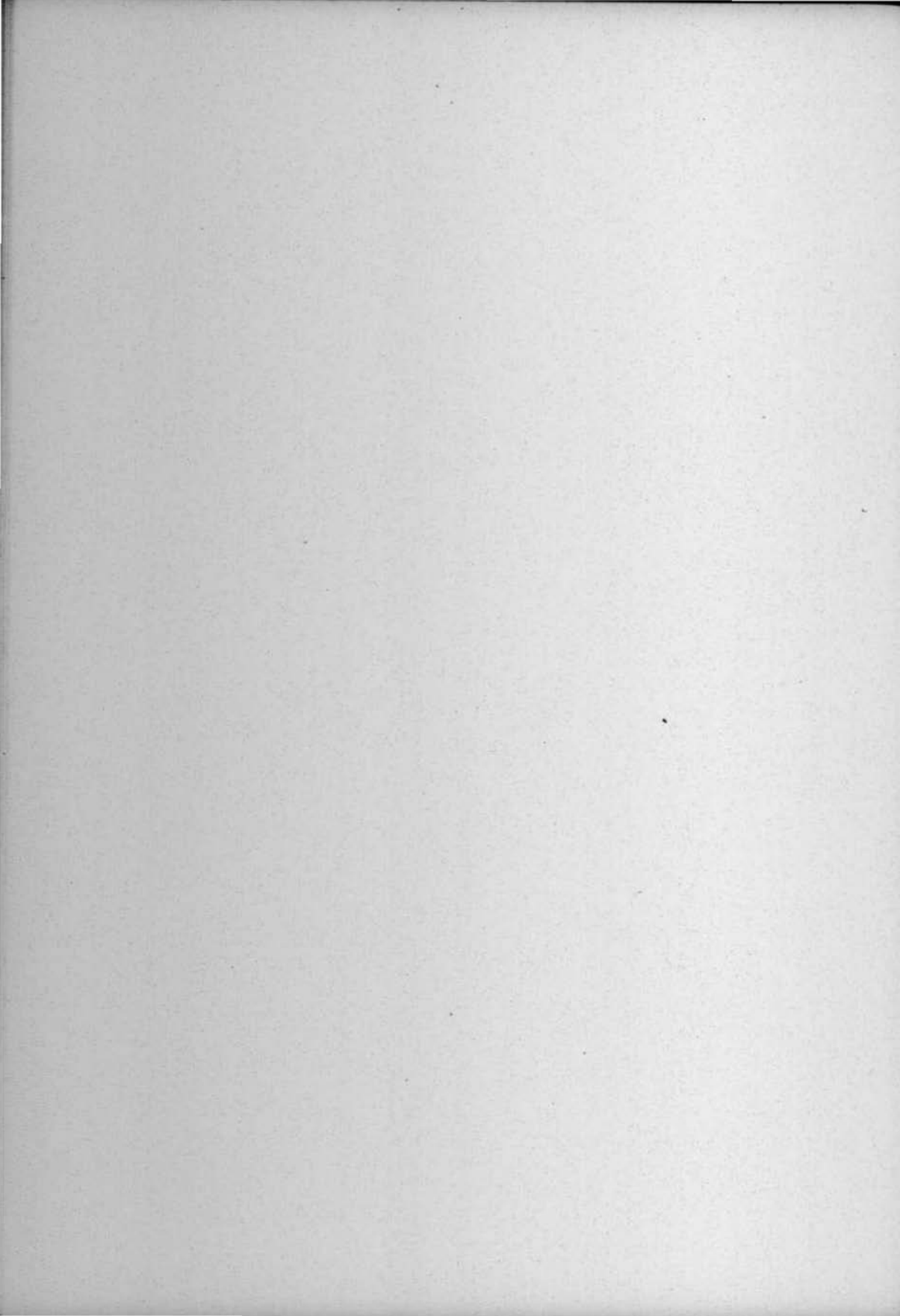


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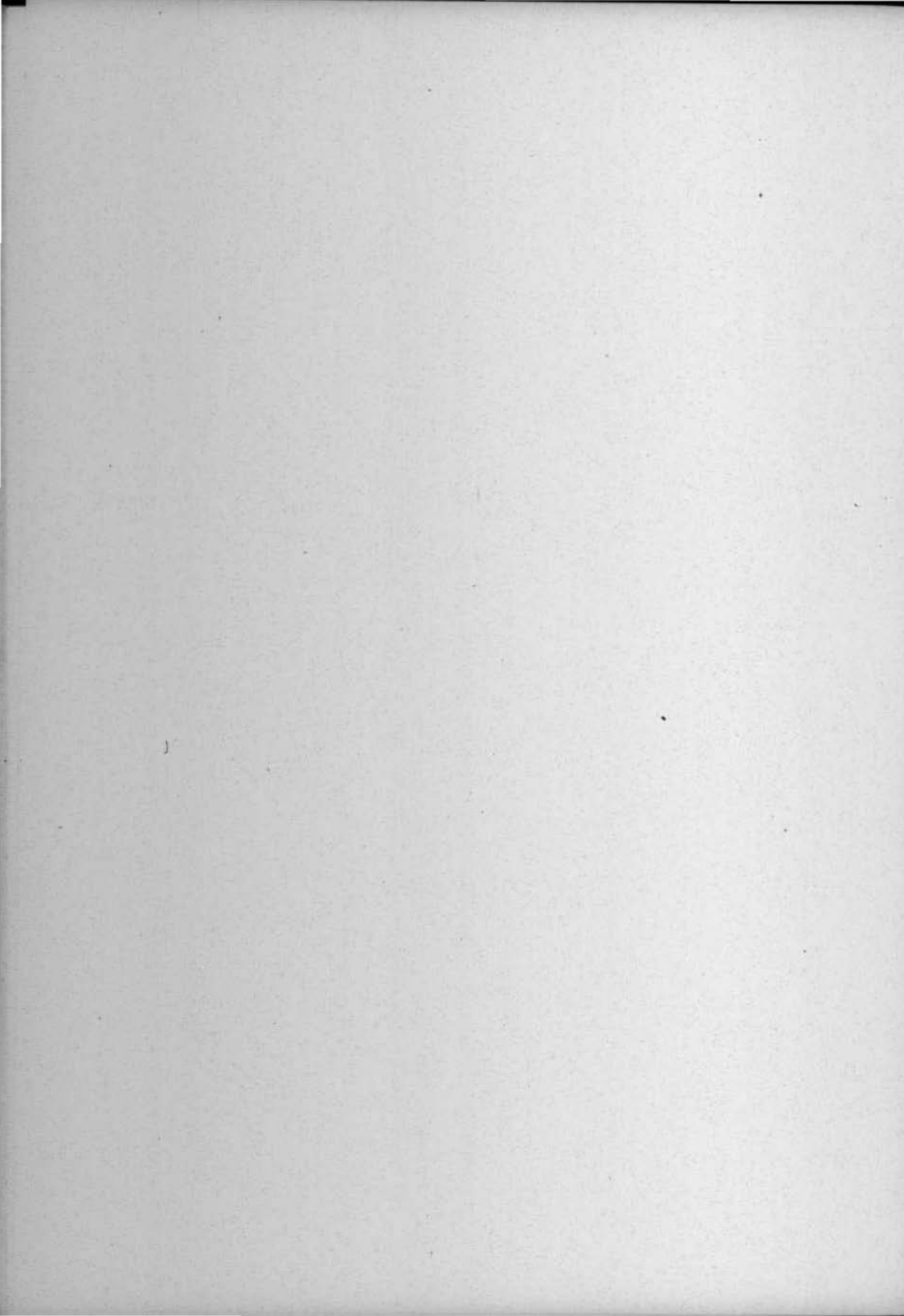
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CHAPTER I

APPROPRIATIONS

April 22, 1937.

BOARD OF CONTROL HAS AUTHORITY TO PAY FOR LABOR FROM NECESSARY AND REGULAR EXPENSE

Dear Sir:

This refers to your favor of April nineteenth, in which the Board of Control requests my opinion as to whether or not the Board of Control has authority under the laws of Florida to pay for labor from the Appropriation of 1935 for Necessary and Regular Expense at the Florida School for the Deaf and the Blind.

The item of labor should be paid out of the appropriation for Necessary and Regular Expense. This item of labor, being the incidental and necessary labor in and about the institution to carry on, is an item of Necessary and Regular expense and has always been so treated and is so set up in the Budget of 1935-1936.

May 3, 1938.

BOARD OF CONTROL, CONSTRUCTION—CHAP. 18,403 OF 1937— TIME PERIOD

Dear Sir:

"Chapter 18403, Acts of 1937 Legislature, provides for an appropriation of \$25,000.00 for the year 1937 and annually thereafter. Most all of the appropriations made by the Legislature are for a fiscal year which ends June 30th instead of a calendar year which ends December 31st, and all records of the Comptroller's Office are carried on fiscal year basis.

"Please give me your opinion as to whether or not the above mentioned appropriation is for a fiscal year or a calendar year."

In reply your attention is called to Section 1 of said Chapter 18,403, Acts of 1937, reading as follows:

"There is hereby appropriated out of the general fund of the State of Florida, and made available to the Board of Control the sum of \$25,000. or as much thereof as may be found necessary for the year 1937, and annually thereafter a like sum for the purpose of establishing and creating a School of Forestry in the University of Florida for the teaching of forestry."

APPROPRIATIONS

In my opinion the above quoted language of the statute clearly refers to calendar years instead of fiscal years mentioned in your letter.

June 17, 1937.

CONSTRUCTION CHAPTER 18150, ACTS 1937, RE: STATE
HEALTH BUILDING

Dear Sir:

This is in reply to your inquiry as to whether or not the appropriation of \$18,000.00 made under the provisions of Chapter 18150, enacted at the 1937 session of the Legislature, may be used to begin the construction of the building referred to in Chapter 18150 before the Federal grant is made available or definitely assured.

I understand that you have available for the purpose of constructing this building the amount of \$12,000.00, in addition to the \$18,000.00 appropriated by the last session of the Legislature. You request my opinion as to whether or not you may begin the construction of this building and proceed to construct the basement and first floor. The foundation would be constructed for the purpose of taking care of the building as originally planned and if and when the Federal grant is available the top floor will be constructed. If, however, the Federal grant should not become available the basement and first floor, which can be constructed with State funds, would be a complete building.

While Chapter 18150 recites that the appropriation is to supplement a Federal grant, it is not expressly made contingent upon this Federal grant. The real purpose recited by the Legislature is to provide a building to meet the needs of the State Board of Health without making it necessary to rent additional office space at the cost of \$300.00 per month. In my opinion this appropriation is available for beginning the construction of the building referred to in Chapter 18150 without waiting for final determination as to the availability of the Federal grant, so long as there is definite assurance that there will be a completed building.

September 13, 1938.

DISTRIBUTION OF MONIES UNDER CHAP. 18015 1937.
BEVERAGE ACT

Dear Sir:

I acknowledge receipt of your letter of September 12, in which you state:

"Section 12 of Chapter 18015, Acts of 1937 provides for the distribution of monies collected under the provisions of said Act.

APPROPRIATIONS

"Section 23 of Chapter 18285, Acts of 1937 gives the amount of appropriation of old age pensions or old age assistance in the amount of \$3,400,000.00 and for dependent children \$400,000.00.

"The receipts of the Beverage Department during the effective date of Chapter 18015 was.....	\$ 4,241,772.62
"From the following sources the net receipts from expense fund on hand June 5, 1938 and receipts from June 5, 1937 to June 30, 1937 was.....	255,216.96
"Receipts from July 1, 1937 to June 30, 1938 was.....	3,820,593.05
"Receipts in hands of office or employees, which was not received by the State Treasurer prior to 7/1/38.....	59,999.03
"Escrow receipts for this period	105,328.33
"Sundry expense refunds	636.25
"Making the total receipts for this department from June 5, 1937 to June 30, 1938 a total of	4,241,772.62

"There has been credited to the State Welfare Fund during the fiscal year ending June 30, 1938 \$3,400,000.00.

"State Welfare Fund, dependent Children..... \$ 395,330.40

"There was spent for operating Beverage Department and refunds on stamps	190,158.06
"Leaving an undistributed balance of	\$ 256,284.16

"No. 1 Should the above mentioned \$255,216.96 collected from June 5, 1937 to June 30, 1937 be carried over and considered a part of the fiscal year beginning July 1, 1937.

"No. 2 Should the \$59,999.03 which was collected and in the hands of the office or employees prior to June 30, 1938, but not deposited in State Treasurer be considered a part of the receipts for the fiscal year ending July 1, 1938.

"No. 3 Should the \$105,328.33 held by the Beverage Department in an Escrow Account where the rehearing was Denied June 7, 1938 by the Supreme Court of the State of Florida be considered a part of the receipts for the fiscal year ending June 30, 1938.

"No. 4 Should the above stated questions be effecting the receipts of this department be answered in the affirmative please give me your opinion as to the following:

"No. A If the Beverage Department cost \$190,158.06 to operate up to June 30, 1938 is a lesser amount than 7% of the total collection would be, could the difference between this amount and 7% of the gross collection be carried over into the next fiscal year or would only the actual cost of collection of the Beverage Department be the amount that could be charged to this fund during that fiscal year.

APPROPRIATIONS

"No. B If \$3,400,000.00 was given to the State Welfare Fund for old age assistance, blind and administrative cost and \$400,000.00 given to the dependent children and \$190,158.06 for cost of operating the Beverage Department there would then be left a balance of approximately \$251,614.56—should this go to the County Fund of the State."

No. 1 Section 13 of Chapter 18015, Laws of Florida, Acts of 1937, provides as follows:

"All funds collected by the State under this act and *under the Beverage Act of 1935*, except such funds as are used for expenses of the Beverage Department, are hereby appropriated to and shall become a part of the old age assistance fund, etc."

Chapter 18015 took effect on the 5th day of June, 1937, prior to the fiscal year beginning July 1, 1937, but under the provisions of Section 13 it is my opinion that all monies collected from June 5, 1937 to June 30, 1937, should be carried over and considered a part of the fiscal year beginning July 1, 1937, and therefore be governed by the appropriation provision of said Act.

No. 2 Monies which are collected and in the hands of the employees of the Department prior to June 30, 1938 but which were not deposited in the State Treasury until after July 1, 1938, should, in my opinion, be considered as a part of the receipts for the fiscal year ending July 1, 1938. If this were not true a Department could defeat the purposes of an act by requiring the employees to hold out a certain amount of money that should have been collected or deposited during one budget year until after the end of that particular year.

No. 3 The sum of \$105,328.33 was collected by the Beverage Department and placed in an escrow account pending the determination of the application of the Beverage Act to State taxpayers. The Court ruled in favor of the Beverage Department and a petition for rehearing was denied June 7, 1938. This money was collected during the fiscal year ending July 30, 1938, and should have been therefore considered a part of the receipts for that fiscal year.

No. 4A Section 2 of Chapter 18015 provides as follows:

"The expenses of the Beverage Department shall not in any year exceed seven per cent. of the taxes collected under the Beverage Act of 1935 and under this Act. At the end of each fiscal year any unexpended balance of said seven per cent. shall be transferred to the State fund for the payment of old age assistance and/or old age pensions."

It is clear from this section that the Legislature did not intend to appropriate a definite sum for the expenses of the Beverage Department

APPROPRIATIONS

but limited the expenses to a sum not exceeding seven per cent. It is therefore my opinion that if the expenses of this Department were less than seven per cent. of the taxes collected, then the difference between this amount and the seven per cent. would be transferred to the proper fund and not carried over into the next fiscal year of the Department.

No. 4B Section 13, Chapter 18015, provides that any surplus money existing after payment of old age assistance, blind and needy children, shall be paid into the State Treasury to the credit of the County School Fund. Chapter 18285, Laws of Florida, Acts of 1937, Section 23, provides for an appropriation of \$3,400,000.00 to be used for old age assistance and to aid the needy blind and \$400,000.00 to be used for dependent children, these two appropriations to be a first charge upon the funds collected under Chapter 18015, Acts of 1937. If, therefore, the sum of \$3,400,000.00 has been given to the State Welfare Fund for old age assistance, the blind, and administrative costs and \$400,000.00 has been given to dependent children, an additional sum of \$190,158.06 for the cost of operating the Beverage Department, and there still remains the sum of approximately \$251,614.56, then under the provisions of Chapter 18015, 1937, this money should go to the credit of the County School Fund of the State.

April 10, 1937.

CONTINUING APPROPRIATION FROM GENERAL REVENUE FUND TO COUNTY SCHOOL FUND

Dear Sir:

This refers to your request with reference to the continuing appropriation from the General Revenue Fund to the County School Fund.

Section 2 of Chapter 17247, Laws of Florida, Acts of 1935, reads as follows:

"Section 2. In order to assist the counties in complying with the provisions of Section 1 of this Act, there is hereby appropriated annually, as a Continuing appropriation to the County School Fund, and from the General Revenue Fund to be apportioned as is provided by law, a sum equivalent to Eight Hundred Dollars (\$800.00) for each Instruction Unit Existing in the State of Florida during the immediately preceding scholastic year, as such Instruction Units are defined and determined by law, less a credit of whatever other amounts accrue to and become a part of the County School Fund as a state contribution by any existing law, or by the Constitution."

You will note that there is appropriated from the General Revenue Fund a sum equivalent to eight hundred dollars for each instruction

APPROPRIATIONS

unit existing in the State of Florida during the immediately preceding scholastic year, less a credit of whatever other amounts accrue to and become a part of the County School Fund as a state contribution by any existing law, or by the Constitution.

In other words, at the beginning of each scholastic year, it is to be determined how many instruction units existed in the State during the preceding year; then, there is to be paid to the county school fund such sums of money as become a part of the county school fund, as above state, together with such a contribution from the General Revenue Fund as will entitle an apportionment of a sum equivalent to eight hundred dollars for each instruction unit, so determined and ascertained.

If this is not the basis on which the apportionment has been made, then such additional apportionment should be made as to comply with these requirements, so as to provide a sum of eight hundred for each instruction unit.

July 27, 1937.

**SALARIES AND EXPENSES AUTHORIZED TO BE PAID.
CHAPTER 17903.**

Dear Sir:

I am in receipt of your letter of the 6th inst., with reference to the appropriation for the Everglades National Park Commission under Chapter 17903, Acts of 1937. You state your inquiry as follows:

"Is the appropriation made in Section 1, in the light of the purpose as expressed in Section 2, broad enough to cover the payment on or after July 1, 1937, of expense bills and certain salaries incurred prior to July 1, 1937, but remaining unpaid as of that date on account of insufficient funds in the prior appropriation?"

In reply I beg to say in my opinion your inquiry should be answered in the affirmative.

April 11, 1938.

**EVERGLADES FIRE CONTROL DISTRICT—UNEXPENDED BALANCE
MAY BE USED—SECTION 4, CHAPTER 16,994, 1935—
CHAPTER 17,707, 1937**

Dear Sir:

I am in receipt of your letter of the 10th ultime, the body of which reads as follows:

"Section 4 of Chapter 16994, Acts of 1935, appropriated to the Everglades Fire Control District the sum of \$50,000.00 and

APPROPRIATIONS

Section 1 of Chapter 17707, Acts of 1937, page 16, known as the Appropriation Bill, appropriated annually for salaries \$15,000.00 and Necessary and Regular Expense \$23,500.00. At the close of the fiscal year ending June 30, 1937, the Everglades Fire Control District had an unexpended balance in their 1935 appropriation of \$1,011.96.

"Please give me your opinion as to whether or not the 1935 appropriation was a continuing appropriation and may be used in this biennial thereby increasing the appropriation made by the 1937 Legislature in the amount of \$1,011.96."

Section 4 of Chapter 16,994, referred to in your letter, reads as follows:

"Upon this Act becoming a law the State Comptroller and State Treasurer are hereby directed to establish a fund to be known as the EVERGLADES FIRE CONTROL DISTRICT FUND, and there is hereby appropriated from the general fund of the State of Florida the sum of Fifty Thousand (\$50,000.00) Dollars, which shall be credited to the said Everglades Fire Control District Fund; provided, further, that the Governor is hereby authorized to procure such additional funds from any department of the Federal Government that he may be able to procure the same from, which may be further designated and/or allocated to this State for the purpose of fire prevention and control, and/or flood control or for any like purpose and cause the same to be deposited in the State Treasury of the State of Florida to the credit of the Everglades Fire Control District Fund. All of which funds shall be available for the use of the Everglades Fire Control District, to be disbursed on requisitions made by the Chief of the Everglades Fire Control District and approved by the Governor, against which the State Comptroller is hereby authorized to draw State Warrants payable by the State Treasurer and chargeable to said fund."

In my opinion the appropriation under said statute is a continuing appropriation and any unexpended balance therein may be use during the biennium beginning July 1, 1937 and extending to July 1, 1939.

January 10, 1938.

FLORIDA INDUSTRIAL SCHOOL FOR GIRLS—UTILITY MEN WORKING IN DAIRY AND POULTRY DEPARTMENT MAY BE PAID

Dear Sir:

I am in receipt of your letter of the 6th instant referring to Chapter 17,707, Laws of Florida, Acts of 1937, which is the general appropriation act for the present biennium. You call attention to the following proviso

APPROPRIATIONS

appearing under the amounts listed for salaries and necessary and regular expense under the title Florida Industrial School for Girls, which proviso reads as follows:

"Provided that none of this money shall be spent on any general farm or to rent any land or to pay a farm superintendent."

You state that you have no farm superintendent and from your letter I assume that you are not conducting a general farm. You state further that your farm activities consist of dairy and poultry departments, gardening and care of the orange grove. You further state that you have a utility man who is doing the necessary farm and dairy work in addition to his other regular duties.

I assume that the above quoted provision in the appropriation act was probably for the purpose of preventing the school from entering into general farming and selling its products in competition with other local farmers. I further assume that your dairy and poultry departments are conducted only for the uses of the school and not for general commercial purposes. In such situation I do not think the said provision of the appropriation act would prevent the payment of a utility man working at the dairy and poultry departments and incidentally raising such feed crops necessary for maintenance of such departments for school purposes.

May 25, 1937.

FROZEN DESSERTS—SECTION 3 OF CHAPTER 16,047 OF 1933 TAKES PRECEDENCE OVER—CHAPTER 16,772 OF 1935, GENERAL APPROPRIATION

Dear Sir:

I am in receipt of your letter of the 20th instant referring to Section 3 of Chapter 16,047, Laws of Florida, Acts of 1933, known as the Frozen Dessert Act, and also referring to Chapter 16,772 of 1935, which is the General Appropriation Act. You make inquiry if said Chapter 16,047 takes precedence over said Chapter 16,772.

Section 3 of Chapter 16,047 provides for license fees for manufacturers of frozen desserts. The last sentence in said Section reads as follows:

"All such fees shall be credited to the Frozen Dessert Enforcement Fund, and shall be appropriated annually to the Department for the enforcement of this Act."

Chapter 16,772 of 1935, on page 15, makes an appropriation as follows:

"Salaries (Frozen Dessert Fund)\$1500.00

APPROPRIATIONS

Necessary and Regular Expenses
(Frozen Dessert Fund) 1500.00"

In reply I beg to say that in my opinion the above quoted provision from Section 3 of Chapter 16,047 of 1933 is a continuing appropriation and that necessary expenditures required in the enforcement of said Act may be paid from funds collected for such purpose even though the same should exceed the amounts mentioned in the above quoted provision of the General Appropriation Act of 1935.

March 11, 1938.

LAW EXAMINERS BOARD CONTINUING, CHAPTER 10,175 (SECTION
4192 C.G.L.) DEFICIENCY IN SALARIES TO BE PAID
FROM GENERAL REVENUE FUND

Dear Sir:

I am in receipt of your letter of the 25th ultimo, the body of which reads as follows:

"I am today in receipt of a salary requisition of * * * Assistant Secretary * * * for the month of February 1938 in the amount of \$75.00. Also a requisition * * * for salary as stenographer in the Secretary's office of the State Board of Law Examiners for the month of February 1938 in the amount of \$150.00.

"The Chairman of the said State Board of Law Examiners has made a certificate that the balance of funds in the hands of the said Board derived from the fees paid to the Board by applicants for admission to the bar of Florida is insufficient to pay the above mentioned salary requisitions and ask that same be paid under provisions of Section 14, Chapter 10175, which we quote in part as follows:

'Should the receipts be insufficient to cover said expenses, such deficiency shall be paid by the State Treasury out of any funds not otherwise appropriated, upon the warrant of the Comptroller, same having first been approved of and certified to by the Chairman of said Board.'

"At the present time the General Revenue Fund of the State of Florida is unable to pay the items legally charged against said fund.

"Please give me your opinion as to whether or not the above two mentioned requisitions can be paid from the General Revenue Fund of the State at this time under the provisions of the above quoted Section."

In reply your attention is called to the title of said Chapter 10,175, Laws of Florida, Acts of 1925, containing the following language:

"* * * and Provide for the Maintenance of Said Board and the Expenses of Conducting its Business, from Fees to be Col-

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lected for Admission Certificates, and Additional Sources When Necessary; * * *

Section 14 of said Act provides that the fees paid by applicants to admission shall be used to defray the administration expenses and said Section further provides as follows:

"* * * Should the receipts from admission fees exceed the expenses aforesaid, the balance or overplus shall be paid into the State Treasury. Should the receipts be insufficient to cover said expenses, such deficiency shall be paid by the State Treasury out of any funds not otherwise appropriated, upon the warrant of the Comptroller, same having first been approved of and certified to by the Chairman of said Board. * * *

In reply I beg to say in my opinion the appropriation under Chapter 10,175 of 1925 is a continuing appropriation and that when the receipts from admission fees are insufficient to cover the administration expenses of said Board any deficiency may properly be paid from the General Revenue Fund of the State.

July 26, 1937.

ROYAL PALM STATE PARK—CONTINUING BUT NOT CUMULATIVE, SECTION 1703, C.G.L.

Dear Sir:

I am in receipt of your letter of the 2nd inst., * * * with reference to the appropriation for the Royal Palm State Park, under Section 1703, Compiled General Laws of Florida, 1927. Inquiry is made if the said appropriation is continuing and cumulative from year to year when not expended.

Section 1703, Compiled General Laws of 1927, makes an annual appropriation of \$2,500 for the development, improvement and maintenance of the Royal Palm State Park. The General Appropriation Acts of 1933, 1935, and 1937 contain appropriations for the care and upkeep of said park. The annual sum appropriated in 1933 and 1935 is \$2,000, while the annual sum appropriated in 1937 is \$4,000.

It is my opinion that the annual appropriation of \$2,500 under said Section 1703 for the development, improvement, and maintenance of the Royal Palm State Park is a continuing appropriation, but I do not think that such funds are cumulative from year to year and subject to later expenditure when not used in the year for which appropriated.

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November 26, 1938.

SCHOOLS—PARITY CLAUSE, SECTION 5, CHAPTER 17247, ACTS OF 1935—STATUS UNCHANGED BY CONSTITUTIONAL AMENDMENT

Dear Sir:

This will acknowledge receipt of your letter of the 25th instant wherein you state:

"Section 2 of Chapter 17247, Acts of 1935 provides an appropriation to the County School Fund from the General Revenue Fund the same equivalent to \$800.00 for each Instruction Unit.

"Section 5 of Chapter 17247 provides for parity of the above mentioned appropriation with other appropriations with certain exceptions.

"The Supreme Court in 1935 held that the parity appropriation was unconstitutional. Senate Joint Resolution No. 141 of the 1937 Legislature proposed an Amendment to Section 2 of Article 9 of the Constitution of the State of Florida to be voted on in the General Election to be held on November 8th, 1938. This Amendment was ratified by the qualified electors of the State of Florida on November 8th, 1938."

And you ask for my opinion "as to whether or not Section 5 of Chapter 17247, Acts of 1935 now becomes effective so that the County School Fund would be placed on a parity with other General Revenue Funds in the State of Florida."

The pertinent part of Section 5 of said Chapter reads:

"This appropriation shall be on a parity and of equal dignity with all other appropriations made by the Legislature of the State of Florida of 1935 or prior years except the following appropriations * * *

It is clearly apparent from the above quoted Section of said Act that same was limited to

*"Appropriations made by the Legislature of the State of Florida of 1935 or prior years * * *"* (Italics ours)

I am of the opinion, therefore, that since said Section limited its application to appropriations made by the Legislature of 1935, regardless of the Amendment to the Constitution, that same is not now effective. I might add that the Amendment to the Constitution only had the effect of placing an additional duty upon the Legislature.

Section 2 of Article XI originally read:

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"The Legislature shall provide for raising revenue sufficient to defray the expenses of the State for each fiscal year * * *"
The amended Section 2 of Article XI reads:

"The Legislature shall provide for raising revenue to defray the expenses of the State including State appropriations for the benefit of the uniform system of public free schools provided in accordance with Article XII of the Constitution and of the state institutions of higher learning for each fiscal year * * *"

This Amendment, having no self-executing features but as I have said before only placed an additional duty upon the Legislature, is not effective until the Legislature has acted.

In view of what I have said, your question is, therefore, answered in the negative.

July 12, 1937.

**STATE GEOLOGIST—APPROPRIATION FOR STATE GEOLOGICAL
SURVEY UNDER CHAPTER 17,707, ACTS OF 1937**

Dear Sir:

I am in receipt of your letter of the 6th instant, the body of which reads as follows:

"Will you please advise the writer as to whether or not under the present laws of the State of Florida, there is such an office as 'State Geologist.'

"According to my information this office was abolished by the 1935 Legislature and the work included under the State Conservation Department.

"I would also like to know if the appropriation made by the 1937 Legislature for the office of State Geologist is in order."

In reply I beg to say under Section 3 of Chapter 16,178, Laws of Florida, Acts of 1933; the Department of State Geologist was abolished. You will note, however, that all duties, powers and authority vested in the State Geologist and certain other officers were vested in the State Board of Conservation created by said Act. It, therefore, appears that while the Department of State Geologist was abolished by said Act, the same provided for a continuation of the State Geological Survey work under said State Board of Conservation. In Section 6 of the said Act you will note that all appropriations made for the biennium beginning July 1, 1933, for the several abolished departments were required to be transferred to the State Conservation Fund for carrying out the provisions of said Act. You will note further that the General Appropriations Act of 1933, Chapter 15,858, made a specific appropriation to the

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State Geologist, which under the terms of said Act was transferred to the State Conservation Fund. You will note further that the General Appropriation Acts of 1935 and 1937, which are Chapters 16,772 and 17,707, respectively, make appropriations to the "State Geological Survey" instead of the "State Geologist." Such appropriations appear to be in order for carrying forward the State Geological Survey work by the State Board of Conservation under said Chapter 16,178, Laws of Florida, Acts of 1933.

June 19, 1937.

UNNECESSARY THAT WORD "APPROPRIATE" BE USED

Dear Sir:

This is in reply to your letter of June 18th concerning Chapter 18117, passed by the 1937 session of the Legislature and approved by the Governor June 10, 1937. This is an act for the relief of one, L. S. Oliver. You request my opinion as to whether or not the provisions of this act are sufficient to constitute an appropriation of \$5,000.00, payable in two annual installments.

It is my opinion that this act sufficiently provides for a valid appropriation. I refer you to the following from the opinion of the Supreme Court of Florida in the case of State ex rel. Bonsteel vs. Allen, 83 Fla. 214, text, page 219:

"The word 'appropriation' is not used in connection with the setting aside of a portion of the money to pay for number plates, postage and clerical work, but it is as much an appropriation as if that word were used. It is a setting apart of money formally or officially for a special use or purpose (see Funk and Wagnall's Standard Dictionary), and where that is done by the legislature in clear and unequivocal terms, it is an appropriation."

"Statutes setting apart or designating public monies for special governmental purposes have been held to be appropriations, notwithstanding the word appropriation is not used."

July 29, 1938.

WELFARE BOARD—USE OF UNEXPENDED BALANCE—CHAPTER 18015, SECTION 13, CHAPTER 18285, SECTION 23, ACTS 1937

Dear Sir:

This is in reply to your letter of July 19, 1938, which reads in part as follows:

"At the end of the fiscal year ending June 30, 1938, the

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State Welfare Board had expended the sum of \$2,818,406.06, which left an unexpended balance from the \$3,400,000.00 annual appropriation of \$581,593.94.

"Please advise me if this unexpended balance of \$581,593.94 can now be used by the State Welfare Board for old age assistance and not be charged against its annual appropriation of \$3,400,000.00 for this year."

On June 5, 1937, Chapter 18015 became a law. Section 13 thereof reads as follows:

"Section 13. All funds collected by the State under this Act and under the Beverage Act of 1935, except such funds as are used for the expenses of the Beverage Department are hereby appropriated to and shall become a part of the old age assistance fund and/or old age pension fund for the payment of old age assistance and/or old age pensions as the same may be made and provided for by the Legislature of the State of Florida. Provided however that any surplus money existing after payment of Old Age Assistance, Blind and Needy Children prescribed in this Act, the same shall be paid into the State Treasury to the credit of the County School Fund."

On June 10, 1937, Chapter 18285 became a law. Section 23 thereof reads as follows:

"Section 23. There is hereby appropriated each year from the General Revenue Fund of the State of Florida or any funds specifically allocated to Old Age Pensions or Old Age Assistance by any law of the State of Florida the sum of Three Million Four Hundred Thousand Dollars (\$3,400,000) to be used for old age assistance and to aid the needy blind and administrative costs of performing the duties of the Board under this Act; and Four Hundred Thousand Dollars (\$400,000) is hereby appropriated each year from the General Revenue Fund of the State of Florida to be used for dependent childrens assistance and for administrative cost of this Act at the discretion of the State Welfare Board."

The two sections must be read together in determining the nature of the appropriation. Section 13 provides that the proceeds of the beverage tax shall be appropriated and placed in a special "Old Age Assistance Fund" for the payment of "old age assistance as the same may be provided for by the Legislature." It also provides that any surplus existing after payment of old age assistance, aid to the needy blind and dependent children, be paid into the county school fund.

The anticipated Old Age Assistance law (Chapter 18285) became a law five days later, and Section 23 thereof appropriated \$3,400,000 each

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year for old age assistance and aid to the blind and for administrative costs. This section also provided that the appropriation was to be out of "the general revenue fund or any funds specifically allocated to old age assistance." The result of this section was to make available only \$3,400,000 of the beverage tax, each year, for the payment of assistance to the aged and the blind, and administrative costs, and also to permit the use of money from the general revenue fund, in the event the beverage tax did not yield the full amount of \$3,400,000.

Section 24 of Chapter 18285 reads as follows:

"This Act shall be liberally construed to the end that the work of social welfare shall be consummated as equitably and expeditiously as possible."

Section 17 of Chapter 18285 provides that there shall be paid a monthly assistance of not more than \$30.00 to every person over sixty-five years of age, who has not sufficient income to provide reasonable subsistence, and who has fulfilled certain residence and other requirements.

I am of the opinion that the above mentioned Acts made available \$3,400,000 each year for the purpose of old age assistance, aid to the blind, and administrative costs, as provided for by Chapter 18285, and that if the unexpended balance from last year, is needed to comply with the provisions of the Act during this year, it may be used for such purpose, without being charged against the appropriation for this year.

CHAPTER II

BANKS AND BANKING

November 17, 1938.

WATER WORKS REVENUE CERTIFICATES AS PROPER INVESTMENT UNDER SECTION 6084 C. G. L. SUPP. (4152 R. G. S.)

Dear Sir:

This is in reply to your letter of November 8th.

The City of Tallahassee proposes to improve the present Electric and Water Works plant and, for the purpose of financing such improvements, intends to issue what are referred to as "Electric and Water Works Revenue Certificates." The interest and principal of the certificates is to be paid out of the net earnings of the Electric and Water Works System of the City.

You request my opinion as to whether State banks may invest their funds in such revenue certificates under the provisions of Section 6084 C. G. L. Supp. (4152 R. G. S.). This section reads as follows:

"Investing fund of banks.—It shall be unlawful for any bank or trust company organized under the laws of this State and doing business in this State, to directly or indirectly invest any of the funds of said bank or trust company in stock of any incorporated company in this State or elsewhere, except the stock of the Federal Reserve Bank of this district; or to directly or indirectly invest any of the funds of such bank or trust company in bonds or securities other than government, either United States, including Federal farm loan bonds or foreign, State, county, *municipal* or district *bonds*, municipal sidewalk and paving certificates, or securities and first mortgage bonds of railroad companies and public service corporations which are solvent and which have not defaulted in payment of interest for two years, and mortgages on real estate and county and *municipal warrants*: Provided, that the provisions of this section shall not apply to bona fide purchase or discounting of commercial paper, bills and notes. (Ch. 7269, Acts June 4, 1917, § 2; Ch. 13576, Acts 1929, § 11.)" (*Italics ours*)

In order to be a legal investment under the statutory provisions above referred to, such revenue certificates would have to be embraced within the definition of "municipal bonds" or "municipal warrants." The following is a definition of "municipal bond" contained in Words and Phrases (2d Series) Vol. 3, p. 471:

"The term 'municipal bond' imports a municipal debt or obligation. The common mind understands, from the fact that a municipal bond is issued, that a municipal debt has been cre-

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ated, and that the faith and good credit of the municipality issuing the bond is pledged to its payment. As used in Const. art. 16, § 5, as amended in 1894, permitting the investment of the school funds in national, state, county, municipal, or school district bonds, the terms does not include bonds of a city indebted to its constitutional limit, issued under the express provisions of Laws 1901, p. 177, c. 85, for the payment of a water-works plant, payable out of a special fund composed of a fixed per cent. of the gross receipts of the plant, and such further sum as the city may from time to time by ordinance transfer from the receipts of the plant or from its general revenue, without pledging the credit of the city. State ex rel. City of Port Townsend vs. Clausen, 82 Pac. 187, 190, 192, 40 Wash. 95."

"Municipal warrants" are defined in Black's Law Dictionary (2d Ed.) as follows:

"Municipal warrants. A municipal warrant or order is an instrument, generally in the form of a bill of exchange, drawn by an officer of a municipality upon its treasurer, directing him to pay an amount of money specified therein to the person named or his order, or to bearer. 15 Amer. & Eng. Enc. Law, 1206."

The following is from McQuillin Municipal Corporations (2d Ed.) Revised, Vol. 6, pp. 78, 79:

"A municipal warrant or order is an instrument generally in the form of a bill of exchange or order drawn by an officer of a municipality upon its treasurer, directing him to pay an amount of money specified to the person named, or his order, or bearer. It is in the ordinary form of commercial paper, but it does not possess all the qualities of such paper. It is regarded as an order of the municipal corporation on itself, and, in substance, is a mere promise to pay the amount specified, and it is subject to all the equities existing or attached to the original transactions.

"Expressed otherwise, 'a warrant of a municipal or quasi-municipal corporation is in fact only the order of one of its officers upon another of its officers to pay some of its funds to a third party.'

"'A city warrant' is nothing more than a device for liquidating an existing municipal indebtedness or a certificate of indebtedness which is neither intended to nor does create any new debt.' 'A warrant even lacks the stable quality of a definite time of payment peculiar to a bond or note, and will only be paid when there is sufficient money in that particular fund on which it is drawn to cash it.' In short, a warrant is a non-negotiable

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obligation of a municipal corporation given for an indebtedness created prior to its issuance."

It is my opinion that the revenue certificates under consideration are not embraced within the definition of "municipal bonds" or "municipal warrants," and, therefore, are not legal investments for State banks, under Section 6034 Compiled General Laws Supplement (4152 R.G.S.).

June 11, 1937.

**BANK LIQUIDATION—COMPTROLLER WITHOUT AUTHORITY TO
RE-ISSUE DIVIDEND CHECK TO STOCKHOLDER OF BANK-
RUPT CORPORATION DEPOSITOR UNTIL
CREDITORS ARE PAID**

Dear Sir:

From your letter of the 11th instant, I note the following:

(a) The * * * Bank * * * suspended business and was placed in liquidation November 29, 1927.

(b) On January 2, 1930, a three per cent dividend was issued to the creditors who had filed their claim, including check to the * * * corporation in the amount of \$32.38.

(c) Subsequent to the failure of the bank, the * * * Corporation was placed in bankruptcy, and in due course said bankruptcy was wound up and the trustee discharged, and the creditors thereof were not paid in full.

(d) That the deposit of the * * * Corporation in the * * * Bank of * * * was not listed among the scheduled assets of the * * * Corporation in its voluntary bankruptcy proceedings.

(e) That the check issued by the liquidator of the Bank to the * * * Corporation was not delivered to said corporation or the trustee in bankruptcy, and was later cancelled under authority of Chapter 15877, Acts of 1933.

(f) That the majority stockholder of said corporation has requested you to reissue the 3% dividend warrant of \$32.38, representing the deposit of * * * Corporation, in the * * * Bank of * * * at the time said Bank was placed in liquidation, making the same payable to the order of said stockholder in the * * * Corporation.

Upon this showing you request my advice as to your authority to comply with the request of the majority stockholder of * * * Corporation.

Until the debts of the * * * Corporation are satisfied, the stockholders are not entitled to the assets of the corporation owned at the time it was placed in bankruptcy. It follows, therefore, that you are without authority to reissue the dividend check to the majority stockholder of the * * * Corporation representing the deposit of said corporation in the * * * Bank of * * * at the time said Bank was placed in liquidation.

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February 21, 1938.

BANKS—CONSTRUCTION OF CHAPTER 17719, ACTS OF 1937

Dear Sir:

This is in reply to your letter of February 18th, enclosing letter from the * * *. You request my opinion in regard to the proper construction of Chapter 17719, Laws of Florida, Acts of 1937.

Section 1 of this Act reads as follows:

"That stockholders in a banking, savings or trust company which is a member of the Federal Deposit Insurance Corporation, a corporation under the laws of the United States of America, or which has an unimpaired surplus equaling the amount of its capital stock, shall not be liable for an assessment of their said stock."

The first question propounded may be substantially stated as follows: Do the words "assessment of their stock" refer to the assessment of stock to make good an impairment of capital while the bank is continuing business or do they refer to the individual liability of the stockholders for the debts of the bank to the extent of the par value of the stock after the same is in liquidation? The distinction between the two is clearly stated in the opinion of the Supreme Court of Florida in the case of *Russ vs. Golson*, 136 So. 506, text page 508:

"Assessment of bank stock to make good impairment of capital and double liability of stockholders subserves entirely distinct and wholly different purposes. One is an incident of operation; the other is an incident of liquidation. *Citizens' Bank vs. Needham*, 120 Kan. 523, 244 P. 7, 45 A. L. R. 1202. The one is the price paid for the privilege of continuing in business (*Delano vs. Butler*, 118 U. S. 634, 7 S. Ct. 39, 30 L. Ed. 260); a stock liability (*Citizens' Bank vs. Needham*, *supra*); in the nature of reinvestment in stock (*Duke vs. Force*, 120 Wash. 599, 208 P. 67, 23 A.L.R. 1354); the other is an individual liability; it does not arise except in case of liquidation, and is enforced for the benefit of creditors of the bank."

While the words of the statute are somewhat ambiguous it is my opinion that the Legislature intended these provisions to affect only the individual liability of stockholders after the bank has been placed in liquidation. In support of this opinion I advance two reasons apparent on the face of the Act itself:

1. The Legislature could not have intended the Act to apply to assessments for the purpose of making good an impairment of a bank's capital because the following words in the

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statute would be meaningless: "or which has an unimpaired surplus equaling the amount of its capital stock." It is obvious that if a bank has such an unimpaired surplus there could not possibly be an impairment of capital.

2. Section 2 of the Act states "but the provisions of this Act shall not relate to any *closed* state bank now in the process of *liquidation* or to one which may be placed in *liquidation* before July 1, 1937." (Italics ours.) It would appear then that the Legislature intended the Act to apply to *closed* banks which are placed in liquidation after July 1, 1937. Since the Act applies to *closed* banks it follows that the assessment against stockholders referred to must be the assessment of the stockholders liability for the debts of a bank after it has been placed in liquidation.

It might well be pointed out that this exemption of stockholders from liability is a conditional one. The banking corporation must either be a member of the Federal Deposit Insurance Corporation or have an unimpaired surplus equaling the amount of its capital stock. It is possible but extremely improbable that the second condition would be effective in most instances for a bank which would be forced to close would be unlikely to have such an unimpaired surplus.

You further request my opinion as to whether Chapter 17719, Acts of 1937 has the effect of unconstitutionally abrogating the contract rights of depositors as to deposits made before July 1, 1937 in banks which may be placed in liquidation after that date. It is my opinion that the voluntary act of the depositor in permitting his deposit to remain in a bank after July 1, 1937 indicates that he has acquiesced in the modification of any rights he may have had. The depositor is charged with knowledge of the law and if he permits his money to remain on deposit after the effective date thereof it is substantially the same as if he had re-deposited it after such time insofar as his rights are concerned. The case of McNair as Receiver vs. W. V. Knott as Treasurer, etc., decided by the Supreme Court of the United States, October Term, 1937, involved analogous principles.

May 19, 1938.

BANKS—STATUTORY LIABILITY OF STOCKHOLDERS—SECTION
6059, C.G.L., SUPPLEMENT—AMOUNT OF ASSESSMENT

Dear Sir:

This is in reply to your letter of May 17th. You state that the Citizens Bank of Plant City failed in 1933 and that there is now due and unpaid on the outstanding debts and obligations of this bank the sum of \$16,940.48. You further state that the bank has a capital stock of

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\$50,000. You further state that the liquidator is of the opinion that some of the shareholders cannot respond to an assessment. You request my opinion as to whether any assessment to be made should be for an amount sufficient to produce the sum of \$16,940.48, taking into consideration the fact that some of the shareholders will not be able to respond, or whether the assessment should be made against the individual stockholders in the same proportion which the outstanding debt bears to the total amount of capital stock.

The following are the pertinent provisions of Section 6059, Compiled General Laws, Permanent Supplement:

"Stockholders of every banking, savings and trust company, shall be held individually responsible *equally and ratably and not for one another* for all contracts, debts and engagements of such company to the extent of the amount of their stock therein at the par value thereof in addition to the amount invested in such shares." (Italics ours.)

The case of *U. S. vs. Knox*, decided by the Supreme Court of the United States and reported in 102 U. S., page 422 is exactly in point. The very words contained in the Florida statute which are hereinabove italicized were contained in the Federal statute under consideration in that case. The United State Supreme Court affirmed the decision of the lower court refusing a writ of mandamus to direct the Comptroller of the Currency to levy an additional assessment because the original assessment levied on a pro rata basis was not collected in full. The Comptroller had refused to make the additional assessment because the enforcement of same would compel the solvent shareholders to pay the sums due from shareholders who were insolvent.

It is, therefore, my opinion that such assessment should be made on a pro rata basis against each stockholder without consideration of possible failure to collect from insolvent shareholders.

August 29, 1938.

MORRIS PLAN BANKS SUBJECT TO CAPITAL STOCK TAX UNDER
CHAPTERS 14677-15726

Dear Sir:

In your letter of the 26th instant you request my opinion whether Morris Plan Banks come within the exemption provision of Section 6 of Chapter 14677, Laws of Florida, Acts of 1931, as amended by Chapter 15726, Laws of Florida, Extraordinary Session of 1931.

Chapter 14677, Laws of Florida, Acts of 1931, as amended, requires all corporations, except such as are specifically exempt in Section 6 thereof, including those corporations heretofore incorporated under the

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laws of the State of Florida, and those that may hereafter be incorporated under the laws of Florida, to file reports with the Secretary of State, and to pay the filing fee of tax prescribed in said Act.

At the time of the enactment of Chapter 14677 and the amendment thereof by Chapter 15726, Morris Plan companies were and Morris Plan Banks now are, organized by filing with the Secretary of State a certificate of incorporation, and paying the fees and complying with the procedure provided for the organization and government of ordinary corporations for profit under the laws of this State. (Section 1, Chapter 16791, Laws of Florida, Acts of 1935).

At the time of the enactment of Chapter 14677 and the amendment thereto by Chapter 15726, Morris Plan companies were not permitted to use the name "bank." (Section 6115, Compiled General Laws).

By the enactment of Chapter 16791, Acts of 1935, Morris Plan companies are now entitled to use the word "bank" in its corporate title, on the provision, however, that such word is used in connection with the words "Morris Plan." (Section 3 of Chapter 16791). This provision indicates the legislative intent to continue the distinction between Morris Plan banks, and Morris Plan companies, incorporated and authorized to operate under the provisions of Chapter 16791 on the one hand, and banks organized under the banking laws.

Section 5, Chapter 16791, prohibits Morris Plan Banks carrying commercial or demand banking accounts, and from accepting trusts or acting as guardian, administrator, or judicial trustee in any form.

Section 6 of Chapter 14677, Acts of 1931, as amended by Section 2 of Chapter 15726, Acts of 1931, exempts from the provisions of said Act banks and trust companies and building and loan association, and there is no mention in said Section 6 of Morris Plan companies or Morris Plan banks, although Morris Plan companies were being operated in Florida at the time of the enactment of Chapter 14677 and the amendment thereto.

Section 7 of Chapter 16791, Acts of 1935, provides:

"Morris Plan Banks shall be taxed in accordance with laws of the State of Florida, as applied to ordinary corporations for profit."

By this provision the Legislature further emphasized the intent that Morris Plan Banks are not to be confused with banks organized under the banking laws, even in the matter of taxation, notwithstanding the use of the word "bank" and the other privileges given to Morris Plan Banks by Chapter 16791 not theretofore extended.

It is a principle of law long established in this State that all laws exempting property from taxation should receive a strict construction,

and no property should be held to be within the exemption unless it is clearly within the terms of the statute granting immunity from taxation, (*Rast vs. Hulvery*, 77 Fla. 74, 80 So. 750; *Lummus vs. Florida Adirondack School*, 123 Fla. 810, 168 So. 232, 237) and tax exemptions whether stated in the Constitution or statute are to be construed against the claimant and in favor of the taxing power in cases of doubt. (*Steuart vs. State ex rel Dolcimascolo*, 119 Fla. 117, 165 So. 378).

Based upon the reasons and principles of law herein stated, I am of the opinion that Morris Plan Banks do not come within the exemption provision of Section 6 of Chapter 14677, Laws of Florida, Acts of 1931, as amended by Chapter 15726.

Therefore, notwithstanding the permission to use the word "bank" in their corporate title, granted by Chapter 16791, Acts of 1935, Morris Plan Banks are and continue to be subject to the capital stock tax imposed by Chapter 14677, Laws of Florida, Acts of 1931, as amended by Chapter 15726, Laws of Florida, Extraordinary Session of 1931.

CHAPTER III COUNTY OFFICERS

SECTION 1

BOARD OF PUBLIC INSTRUCTION

October 14, 1937.

AMENDMENT OF BUDGET UNDER CHAPTER 18134, ACTS OF 1937— EXPENDITURE OF SCHOOL FUNDS FOR COUNTY FORESTER—NOT AUTHORIZED

Dear Sir:

This is in reply to your letter of October 8th enclosing copy of letter from * * * Superintendent of Public Instruction of Sumter County.

In view of the fact that the millage in two special tax school districts will have to be raised under the provisions of court orders, the budget should be amended under the provisions of Section 17 of Chapter 18134, Laws of Florida, Acts of 1937.

In regard to the second question you propound, it is my opinion that the county school board has no authority to pay a part of the salary of a county forester. Even though the employment of a county forester may result in increased collection of delinquent taxes, it is my opinion that the expenditure of such monies could not be classified as a school purpose.

April 11, 1938.

APPOINTEES UNDER CHAPTER 17747, ACTS OF 1937

Dear Sir:

This is in reply to your letter of April 7th.

Chapter 17747, Laws of Florida, Acts of 1937, provides that the Governor is to appoint two new members to Boards of Public Instruction organized in accordance with the Act. The provisions of the statute authorize the Governor to appoint the members from Districts 4 and 5 "to serve on the Board of Public Instruction until their successors in said District are elected and qualified, as provided in this Act." Sections 6 and 7 of the Act provide for the nomination and election of members from Districts 4 and 5 in the primary and general elections of 1940.

BOARD OF PUBLIC INSTRUCTION

It is therefore my opinion that the members appointed by the Governor for Districts 4 and 5 hold office until the beginning of the regular four year term of the members elected at the general election in 1940.

February 6, 1937.

AUTHORITY TO BORROWING MONEY TO BUILD DWELLINGS ON
SCHOOL PROPERTY TO HOUSE MEMBERS OF FACULTY.
NOT AUTHORIZED

Dear Sir:

This is in reply to your inquiry concerning the legality of borrowing Federal funds for the purpose of constructing dwellings on school property located on Miami Beach for the purpose of housing members of the faculty. I have also received a communication from Honorable Alphonsus L. Bowes relating to the subject of your inquiry.

Due to the high rentals prevailing in Miami Beach, most of the members of the faculty of the Miami Beach schools are required to live in the City of Miami. It appears that there is available land adjoining the North Beach school which can be utilized for some six or seven dwellings to house members of the faculty. It has been proposed that Federal funds be secured, if possible, to build such dwellings, repaying by monthly rents the loans to the Federal agency.

Under the provisions of Section 622 (8), Compiled General Laws of Florida, Supplement, the County Board of Public Instruction of Dade County, Florida, should hold title to all public free school property within the County. The question then to be determined is whether or not the County Board of Public Instruction of Dade County, Florida, has the right to borrow money for the purpose of constructing such dwellings.

Section 622 (10), Compiled General Laws of Florida, Supplement, enumerates the powers and duties of the Board of Public Instruction. The powers therein conferred upon the County Board of Public Instruction would not, in my opinion, authorize the erection of such dwellings. While the powers therein enumerated are expressly stated to be cumulative, I find no legal authority for such a project in other provisions of the law that might apply. See the case of *Harvey vs. Board of Public Instruction for Sarasota County*, reported in 133 So. 868, in which the Supreme Court of Florida announced the rule that the powers of Boards of Public Instruction are limited by statute, may not be extended by construction and that the Boards should not assume any authority where the right to exercise such authority is doubtful. See also the case of *Logan vs. Board of Public Instruction for Polk County*, reported in 158 So. 720, in which the rule is announced that money should be borrowed for school purposes only when and to the extent that it is imperatively necessary to conduct schools as required by statute.

BOARD OF PUBLIC INSTRUCTION

April 3, 1937.

**AUTHORITY TO COUNTY SCHOOL BOARD TO ADOPT RESOLUTION
AUTHORIZING ONE MEMBER TO SUSPEND ACTION OF BOARD***Dear Sir:*

This is in reply to your letter of March 30th in which you request my opinion as to the validity of a resolution adopted by the Dade County Board of Public Instruction which reads as follows:

"RESOLVED that whenever any action or thing has been authorized or any order given by the Board at any meeting, any member of the Board, for cause not known to such member at the time action was taken, shall have authority after the meeting adjourns, if the same has not been carried out, to hold up such action or suspend such order through notice to the secretary, until the next regular or special meeting of the Board, at which time the matter shall be called up for further action.

"Provided, however, that the Chairman or member who suspended the order may himself restore the same without action of the Board when the cause for which the suspension was made has been removed.

"Provided further that whenever any action or order of the Board has been thus suspended, the Secretary shall be immediately notified of same and he in turn shall promptly serve notice upon the other members of the Board who are not aware of such suspension."

It is my opinion that any County Board of Public Instruction has the inherent authority to prescribe by resolution or otherwise reasonable rules of procedure to be followed by the Board in transacting its business. I do not believe that the resolution above quoted is unreasonable and therefore it is my opinion that there is no legal objection to same, so long as it is followed in good faith and not resorted to as an excuse for evading lawful contract obligations.

In regard to your further question concerning the employment of persons in the office of the County Superintendent I refer you to my opinion reported in the Biennial Report of the Attorney General, 1933-34, pages 417-418.

June 25, 1937.

**AUTHORITY TO USE SCHOOL FUNDS FOR EMPLOYMENT OF
NURSES—AUTHORITY TO APPROPRIATE FUNDS FOR
SUPPORT COUNTY HEALTH UNIT***Dear Sir:*

This is in reply to your inquiry of June 10th and your two inquiries of June 19th. You request my opinion on the following questions:

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1. Does a County Board of Public Instruction have authority to employ nurses?
2. Does a County Board of Public Instruction have authority to appropriate funds as a contribution to the support of a County Health Unit?

The following is from an opinion of the late Justice Fred H. Davis, written at the time he was Attorney General, and which opinion is reported at page 357 of the Biennial Report of the Attorney General for the years 1929-30:

"Under repeated rulings of the Supreme Court the school funds should not be used for any purpose except for the support and maintenance of the public free schools. I would not go so far as to say that it would be illegal for the School Board to make provision in its budget for paying a reasonable amount to a physician to determine the condition of health of pupils attending the schools, especially when there was threat of an epidemic of contagious disease. At the same time, such a provision would be an unusual one in a school budget in view of the fact that there is a separate health department existing in the State which furnishes services of this character, as well as a separate health department in each city, which usually looks after the health of all the people, including school children. If as a matter of fact the Board of Public Instruction of your county actually employed a medical officer to make an examination of the school children of the county to determine whether or not they had dyptheria, and they have actually agreed to pay such health officer for making such examination, my advice would be that this bill for that service be paid. The matter might be considered as an emergency in view of the nature of the disease involved such as would warrant the School Board in paying the physician under the circumstances, but as a general policy, it appears to me that only extraordinary circumstances warrant the School Board in expending the school funds on matters of health, which are matters properly falling within the jurisdiction of the county and state health departments."

I further call your attention to Section 3185, Compiled General Laws of Florida, 1927, which reads as follows:

"The State board of health shall have supervision over all matters pertaining to the medical inspection of school children in Florida, with such duties and powers as are prescribed by law pertaining to public health, and all school children shall

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be examined as to their physical condition at least once during each school year. (Ch. 6829, Acts 1915, "1")

It is my opinion that both of the question hereinabove stated must be answered in the negative, for otherwise the County School Board would be exercising the functions of the State and county health departments.

October 26, 1938.

**AUTHORITY OF COUNTY BOARD TO BORROW MONEY FOR
CONSTRUCTION OF SCHOOL BUILDING AND EQUIPMENT**

Gentlemen:

This is in reply to your joint request for my opinion which reads as follows:

"Will you please advise whether a Board of Public Instruction has the authority to borrow against racing commission funds, county maintenance taxes, district maintenance taxes, or any other school funds to be received during the next fiscal year, and to use the proceeds of the loan for the purpose of paying a part of the cost of constructing a school building, the balance of which is represented by a Federal grant, or for the purpose of paying the entire cost of constructing a school building or purchasing equipment."

The power of a Board of Public Instruction to borrow money must necessarily be derived from the Constitution and the Statutes of Florida. So far as I have been able to ascertain, the only general statutes authorizing the County Boards to borrow money are the following:

Sections 566-8, Compiled General Laws of Florida, 1927,
Chapter 15779, Laws of Florida, Acts of 1931,
Chapter 16171, Laws of Florida, Acts of 1933, and
Chapter 16815, Laws of Florida, Acts of 1935.

The last two statutes named above are limited to providing funds for payment of teachers' salaries and transportation expense. If any statutory authority exists, therefore, it must be found in either or both of the statutes first hereinabove listed. It is my opinion that Sections 566-8, Compiled General Laws of Florida, 1927, do not authorize County Boards of Public Instruction to borrow money for the purpose of constructing school buildings. County Boards of Public Instruction may borrow money under Sections 566-8 only to pay outstanding school warrants and "expenses incurred in operating the schools."

The authority to borrow money for the purposes stated in your request, without issuing bonds, must, if it exists, be derived from the provisions of Chapter 15779, Laws of Florida, Acts of 1931, as incorporated

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in Section 568 (7) Compiled General Laws, Permanent Supplement, which reads as follows:

"On and after September 1, 1931, the county boards of public instruction of the several counties of the State of Florida are hereby authorized and empowered to borrow sums not exceeding eighty per cent. of the amount of revenue *reasonably expected to be received from the State of Florida from the County school fund* at a rate of interest not exceeding eight per cent.: *Provided the estimate of all revenue to be received from said source has been approved by the State Superintendent of Public Instruction. Any monies borrowed under the provisions of this section for any fiscal year shall be repaid to the parties from whom borrowed out of the first receipts of such county board of public instruction from said source.* The right and power to borrow money herein granted shall be cumulative to the powers now existing, but the anticipated receipts from the county school fund shall not be considered in borrowing money under any other law. No money shall be borrowed under the provisions of this section unless all monies borrowed under the provisions have been repaid in full." (Italics ours)

Under the provisions of law hereinabove set forth County Boards are authorized to borrow sums not exceeding 80% of the revenue reasonably expected to be received *from the State of Florida from the county school fund*. The words last herein in italic were intended to limit the amount to be borrowed. In determining this limitation only the amounts to be received *from the State* are to be considered. It would therefore seem that funds anticipated to be raised from local taxation could not be included in arriving at the amount permitted to be borrowed. This would exclude county maintenance taxes and district maintenance taxes.

Section 568 (7) Compiled General Laws, Permanent Supplement, does not specifically define the purposes for which the money borrowed thereunder may be used. It is clearly contemplated, however, that the money so borrowed shall be repaid out of the first monies received *from the State*. I call your attention to Section 508 (9) Compiled General Laws, Permanent Supplement:

"The proceeds of the one mill tax levied pursuant to Section 6 of Article XII of the Constitution and the interest on the State School fund and all funds appropriated by the Legislature of the State of Florida for public free schools shall be apportioned to and among the several counties in the State in the manner provided by law, and shall be disbursed to said counties by payment of such sums to the State Treasurer as ex-officio treasurer of that portion of the county school funds described in this paragraph to be held by him as part of the county school funds. But all such funds shall be held in a separate fund to

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be known generally as "Teachers salary fund of _____ county," and shall be disbursed by warrant drawn by the respective boards of public instruction on the State Treasurer as ex-officio treasurer of that portion of the county school fund of the said county in this paragraph described. No warrant shall be drawn against the teachers salary fund of any county save and *except for the purpose of paying the salaries of teachers in the public free schools of each county in the current scholastic year and for expense incurred in the transportation of pupils* in said period, and each warrant drawn must state upon such warrant that the same is drawn for one of these purposes and none other. (Ch. 16170, Acts 1933 (7)) (Italics ours).

It necessarily follows that if the funds borrowed under Section 568 (7) Compiled General Laws, Permanent Supplement, must be repaid out of the funds made available under Section 508 (9) Compiled General Laws, Permanent Supplement, such funds can only be borrowed under Section 568 (7) for the purposes for which funds may be expended under Section 508 (9). The conclusion is inevitable that money may not be borrowed under the provisions of Chapter 15779, as incorporated in said Section 568 (7), except for the purpose of paying salaries of teachers and expenses incurred in transportation of pupils.

It is, therefore, my opinion that there is no general statutory authority for a county board of public instruction to borrow against racing commission funds, county maintenance taxes, district maintenance taxes, or other school funds to be received during the next fiscal year to defray a part of the cost of constructing a school building. Article XII, Section 17 of the Florida Constitution provides for the issuance of bonds to defray the cost of erecting school buildings and seems to be the exclusive method provided.

November 30, 1937.

AUTHORITY OF COUNTY BOARD TO BORROW MONEY TO OBTAIN INSURANCE ON FIVE-YEAR BASIS—AUTHORITY OF BOARD TO PURCHASE BUSES TO BE PAID FOR OVER A PERIOD OF YEARS

Dear Sir:

This is in reply to your request for my opinion on two matters which may be stated as follows:

1. Does a County Board of Public Instruction have the legal authority to contract for insurance on school property on a 5-year basis, paying for same out of the proceeds of a note payable over a period of not exceeding five years, with specific provision that the amount may be repaid at any time and that the

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insurance may be cancelled at any time, and no more than the short rate premium would be charged?

2. Does a County Board of Public Instruction have the legal authority to purchase school busses, arranging to pay for same over a period of three or four years?

Both of the above questions, when carefully analyzed, involve identical principles of law. The first question involves the right to borrow money for a period of years to be used in paying property insurance premiums. The second question involves the right of the Board to obligate itself directly to a dealer in school busses to pay for same over a period of several years. There is little essential difference between borrowing the money in the first case from the bank to pay the insurance company and becoming obligated in the second case to pay the dealer in school busses. In both instances it is creating a pecuniary obligation payable over a period of years.

The power of a Board of Public Instruction to so obligate itself and borrow money must necessarily be derived from the Constitution and the statutes. So far as I have been able to ascertain, the only statutes authorizing such County Boards to borrow money are the following:

Sections 566-8, Compiled General Laws of Florida, 1927,
Chapter 15799, Laws of Florida, Acts of 1931,
Chapter 16171, Laws of Florida, Acts of 1933, and
Chapter 16815, Laws of Florida, Acts of 1935.

The last two statutes named above are limited to providing funds for payment of teachers' salaries and transportation expense.

In my opinion none of the statutes hereinabove referred to authorize a County School Board to become obligated under the circumstances here under consideration. Each of the above statutes have reference to borrowing money with relation to *current revenues*. See Board of Public Instruction vs. McKenzie, 136 So. 899. In the case of Leonard vs. Franklin, 93 So. 688, the Supreme Court stated that Sections 10, 11 and 17 of Article XII of the Florida Constitution render invalid an act of the Legislature providing for the issuance by a County Board of Public Instruction of long term interest bearing coupon warrants for the purpose of providing funds to acquire, build and equip high school buildings. The reason advanced by the Supreme Court was that the proceeds of such warrants could not properly constitute a part of the County School Fund as defined in the Constitution. The same may be said in regard to the proceeds of the note in the first instance here considered and the advancement of credit in the purchase of school busses in the second instance. See the case of Board of Public Instruction vs. First National Bank, 143 So. 738, text page 743, for a discussion of authorities dealing with the authority of County School Boards to

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borrow money. See also the case of *State vs. Board of Public Instruction for Indian River County*, 125 So. 357 approving the rule stated in the case of *Leonard vs. Franklin* (supra).

You call my attention to the case of *Logan vs. Board of Public Instruction for Polk County*, 158 So. 720. In that case obligations of a school district as distinguished from county-wide school obligations were involved. It further appeared in that case that the money was borrowed and used for school district purposes before the enactment of Section 566, Compiled General Laws of Florida, 1927. That portion of the opinion referring to spreading expenses for permanent equipment, insurance premiums, etc., over a period of "time" must be construed in the light of other decisions of the Supreme Court and of controlling statutory and constitutional provisions.

There is another constitutional question involved. Under the provisions of amended Section 6 of Article IX of the Florida Constitution the "counties, districts or municipalities of the State of Florida shall have power to issue bonds only after same shall have been approved by the majority of the votes cast in an election in which the majority of the freeholders * * * shall participate." In view of the fact that the County Board of Public Instruction is an instrumentality of the County (see *Board of Public Instruction vs. First National Bank*, 143 So. 738, text page 741) this constitutional provision would apply. The Supreme Court has held in the case of *Scholtz vs. McCord*, 150 So. 234, that the Board of Commissioners of State Institutions had no authority to enter into an arrangement whereby the Board would deed land at the Florida State Hospital to an agency of the Federal Government and enter into a lease agreement extending over a period of years to pay for a building to be constructed thereon. In the case of *Herbert vs. Thursby*, reported in 151 So. 385, the Supreme Court held that the County Commissioners of Volusia County had no right to borrow money from the Federal Government, issuing a note to evidence the loan, without an election under amended Section 6 of Article IX. The Supreme Court in an advisory opinion to the Governor, reported in 114 So. page 850, ruled that a statute authorizing the State Road Department to borrow money to pay for its road building program, the same to be repaid from current revenues, was invalid as contravening Section 6, Article IX before same was amended. The Court did not regard the distinction between a note and a bond as being material. In my opinion there would be no essential distinction between a note to be given to raise money to buy insurance and a retain title contract to purchase busses without reference to current revenues on the one hand and bonds issued for the purpose of paying such obligations on the other. The Court has so construed amended Section 6, Article IX as to make the ultimate liability of the taxpayer in paying an obligation payable over a period of time the chief factor in determining whether or not the evidence of the indebtedness is to be regarded as being a "bond" under its provisions.

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I am not unmindful of the fact that an enormous saving would result if insurance could be purchased on a five-year basis and if busses could be purchased over a period of years. Desirable as it may be to accomplish such results, it is my opinion that under the law as it now stands the County Board does not have sufficient legal authority to incur obligations payable over a period of years. Unless current revenues are sufficient it would be necessary to resort to the issuance of district bonds, which would necessarily have to be approved in an election.

October 29, 1938.

**AUTHORITY OF BOARD TO SPEND COUNTY SCHOOL
FUNDS ON SPECIAL AUDIT**

Dear Sir:

This is in reply to your letter of October 18, in which you request my opinion as to whether it would be proper for the Dade County Board of Public Instruction to authorize school funds to be expended for the preparation of a special audit which would disclose the amount of the State and general county funds expended in Special Tax School District No. 14.

It seems from correspondence submitted by your office in connection with this matter that there is a dispute between the Trustees of Special Tax School District No. 14 and the Board of Public Instruction of Dade County in regard to the amount of such funds which should be expended in that special tax school district. The purpose of the proposed audit would be to definitely ascertain the exact amount of such State and general county funds expended in District No. 14.

Dade County, having a population in excess of 140,000, comes under the provisions of Chapter 17747, Laws of Florida, Acts of 1937. Under that statute the Board of Public Instruction of Dade County has the power, under the Eighth Paragraph of Section 13

"To annually employ, determine the salaries of, and contract with teachers, as provided by law, for each and every public free school of the county, including schools within special tax school districts. Such board shall not employ, contract with, or pay any person a salary for services as a teacher who does not hold a valid teacher's certificate granted under the laws of this State."

If, in exercising the power vested in the County Board under the Eighth Paragraph of Section 13 hereinabove set forth, the County Board deems it advisable to obtain the audit concerning which you inquire, it is my opinion that it has authority to direct and pay for the preparation of such an audit. The Board of Public Instruction has a considerable

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amount of administrative discretion which it may exercise within the law and it is my opinion that it has sufficient authority under the Sixteenth Paragraph of Section 13 of said Chapter 17747 to procure the preparation of such an audit. The Sixteenth Paragraph of said Section 13 reads as follows:

"To keep accurate accounts of all their official acts, proceedings and decisions, of all money received, held or disbursed, and of all property acquired or disposed of in proper books, and to keep a record of the state and condition of each school, and to report the same to the State Superintendent of Public Instruction when required. It shall also make such reports to the State Board of Education, financial and otherwise, as such board may from time to time required."

September 13, 1937.

**AWARDING CONTRACTS—NECESSITY FOR COMPETITIVE
BIDS. CHAPTER 17747**

Dear Sir:

You request my opinion as to whether or not under subsection 4 of section 13 of Chapter 17747, Laws of Florida, Acts of 1937, it is necessary for the Dade County School Board to advertise for competitive bids before making contracts for the purchase of science equipment, laboratory equipment, library books and other similar commodities. I have carefully considered the statutory provisions hereinabove referred to. It is my opinion that under the law as enacted it is necessary to advertise for competitive bids in the above named instances.

April 14, 1937.

**CONSTRUCTION OF ADMINISTRATION BUILDING PROPER
EXPENDITURE UNDER SECTION 9 OF ARTICLE XII
OF THE FLORIDA CONSTITUTION**

Dear Sir:

This is in reply to your request for my opinion as to whether or not the Board of Public Instruction of Escambia County would have the authority to make expenditures for the construction of an administration building proposed to be financed in part with Federal funds. The building would be so designed as to provide suitable administrative offices, a Board room, an assembly room for the teacher groups to meet a,dequate space for the proper care of free textbooks, storage space and a fire-proof vault for the protection of the school records.

It is my opinion that such an expendtiure would be proper and would conform with the requirements of Section 9 of Article XII of the Florida

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Constitution requiring that expenditures shall be for the sole support and maintenance of public free schools. See the case of Board of Public Instruction vs. Kennedy, 147 So. 250, for a discussion of obligations legally payable for the support and maintenance of the public schools.

It is my opinion that if such a building is actually needed, and in a county the size of Escambia the need for such a building is readily apparent, the Board of Public Instruction would have authority under the eleventh paragraph of Section 561, Compiled General Laws of Florida, 1927, to provide for its construction.

October 13, 1938.

**HIGH SCHOOL PUPILS, BOARD MAY DESIGNATE SCHOOL IF
FACTS JUSTIFY SUCH ACTION**

Dear Sir:

I have your letter of October 10th requesting an opinion upon the question "... if there are high school pupils living in a community where a high school is not maintained, and where the pupils could attend either of two schools of equal standard, can the board designate one of these schools for the pupils to attend. . . Can the Board refuse the pupils transportation to this school?"

It states further that the Board operates a school bus from this community (Center Hill) to Bushnell, and that some of the pupils can reach another school by way of another bus route.

I am of the opinion that the Board can designate a school for such high school pupils to attend, provided, the Board in its discretion believes that it is to the best interest of the school system in that county for the pupils to attend a school of its choice. I believe, however, that such discretion should not be arbitrary, and should be based upon facts that would justify its action. If, however, there are two high schools equally available to the pupils and a bus route is maintained to both schools, the pupils should be given the right to make their own choice as to where they shall go, unless, as I have above pointed out, there is some valid reason for directing otherwise.

The nearest declaration of the Legislation that I can find on this subject is Chapter 17250, Laws of Florida, 1935. This Act provides in Section 1:

"That all persons of school age residing in the several counties of the State of Florida having a population of not less than 29,880 and not more than 30,000 inhabitants according to the last preceding Federal census shall have the right without the payment of any tuition or charge whatsoever to attend any High School in said several counties provided, however, that said pupil

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provides his or her transportation in going to and from any such High School."

From this expression by the Legislation, it seems to me that it strengthens what I have said above, as under this Act any person living in the counties coming within the meaning of the Act can select a school in any of the counties described, of their own choice, except the student would have to provide for his or her own transportation. Of course, the transportation in that instance would be out of the county and there would probably be no school bus maintained for that purpose. However, where there is one maintained it seems to me that what I have said above would apply.

July 21, 1937.

**MEMBERS APPOINTED UNDER SECTION 8, CHAPTER 17747 SHOULD
BE COMMISSIONED UNTIL 1940**

Dear Sir:

In your letter of the 21st instant, you refer to Sections 6 and 8 of Chapter 17747, Laws of Florida, Acts of 1937, which Act creates two additional members of the County Board of Public Instruction for Dade County for new Districts numbers 4 and 5, created by said Act and which authorizes the Governor to appoint said members.

Section 8 of said Act authorizes the Governor to appoint a member each for District No. 4 and District No. 5 in each county of the State having a population of not less than 140,000 according to the last preceding State or Federal census, and having at the time of the effective date of said Act a board of public instruction of three members, to serve until their successors in said Districts are elected and qualified as provided in said Act.

Section 6 of the Act provides for the nomination and election in the year 1940 of members of said Board for districts numbered 4 and 5, to serve for a term of four years, and that thereafter their terms of office shall be four years.

Section 6 of Article XVIII of the Constitution provides that the term of office for all appointees to fill vacancies in the elective offices under this Constitution, shall extend only to the election and qualification of a successor at the ensuing General Election. The office of county school board member is not provided for in the Constitution of Florida, and in my opinion Section 6 of Article 18 is not applicable in this particular instance.

Section 7 of Article IV of the Constitution provides that when any office from any cause shall become vacant and no mode is provided by this Constitution or by the laws of the State for filling such vacancy,

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the Governor shall have the power to fill such vacancy by granting a commission for the unexpired term. The Constitution does not provide a mode for filling a vacancy in the office of county school board member, but Section 8 of Chapter 17747, Acts of 1937, does provide a mode for filling the vacancy in the office of school board members for districts 4 and 5 by appointment by the Governor of such members until their successors in said districts are elected and qualified, as provided in said Act.

It is my opinion, therefore, that these particular members, that is, the school board members for Districts 4 and 5, appointed under Section 8 of Chapter 17747, should be commissioned until the General Election of 1940.

November 29, 1937.

**MILEAGE AND COMPENSATION OF MEMBERS OF BOARDS OF
PUBLIC INSTRUCTION IN CERTAIN COUNTIES**

Dear Sir:

You request my opinion on the following questions:

1. Is there any legal authority for paying members of a county board of public instruction mileage for traveling over the county inspecting schools, or for any other purpose than traveling to and from the court house by the nearest practical route in attendance upon meetings of the board?

2. Does Chapter 16,817, Section 1, Acts of 1935, Laws of Florida, repeal all or any part of Section 526, Compiled General Statutes of Florida of 1927, except the amount of per diem, as applied to counties which have or may hereafter have a population of more than sixty thousand (60,000) and not more than one hundred thousand (100,000) inhabitants according to the last preceding State or Federal census?

3. Are members of county boards of public instruction serving in counties of more than sixty thousand (60,000) and not more than one hundred thousand (100,000) inhabitants as set forth in Chapter 16,817, Section 1, Acts of 1935, Laws of Florida, legally entitled to any mileage for any purpose whatever, and if so under the authority of what act or acts?

Replying to your first question, it is my opinion that the same must be answered in the negative. I call your attention to the opinion of the late Justice T. F. West, rendered at the time he was Attorney General, under date of January 12, 1915, which reads in part as follows:

"Replying, I will say that, in my opinion, there is no legal authority for paying from public funds a per diem or mileage

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to members of the Boards of Public Instruction of the counties of this State while traveling over the county inspecting public schools."

The general law on the subject has not been changed since the rendition of the above opinion. I agree with the conclusions arrived at in the said opinion.

Answering your second question, it is my opinion that Section 1 of Chapter 16,817, Laws of Florida, Acts of 1935, assuming the same to be constitutional, has the effect only of repealing by implication the amount of per diem or compensation provided for in Section 526, Compiled General Laws of Florida.

What I have said in regard to the second question applies in answer to the third. Members of County Boards of Public Instruction in counties named in Chapter 16,817 are entitled to mileage under the provisions of Section 526, Compiled General Laws of Florida. The compensation referred to in Chapter 16,817 does not purport to include mileage to and from the Court House. It is my opinion that members of such Boards of Public Instruction would be entitled to mileage under Section 526, Compiled General Laws of Florida, on the same basis as members of such boards generally throughout the State.

November 30, 1937.

**RATE OF INTEREST ON JUDGMENTS OR DECREE OBTAINED ON
ANY BOND OR OTHER WRITTEN EVIDENCE OF INDEBTEDNESS
APPLICABLE TO PUBLIC INSTRUCTION**

Dear Sir:

I have your letter of November 27th wherein you request me to advise you whether or not the provisions of Chapter 16835, Acts of 1935, apply to judgments obtained against the Board of Public Instruction on account of obligations of the general school fund.

The applicable part of the Act reads:

"Section 1. All judgments and/or decree obtained or rendered on any bonds or other written evidence of indebtedness of any County, Special Road and Bridge District or any County for the use and benefit of any Special Road and Bridge District or incorporated city or town or taxing district shall bear interest at the rate of five per cent per annum. * * *"

The answer to your question turns upon whether or not the Board of Public Instruction comes within any of the above classifications. Apparently the word county is broad enough to include the Board of Public Instruction because the Supreme Court of Florida in the case of the

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FIRST NATIONAL BANK OF GAINESVILLE vs. BOARD OF PUBLIC INSTRUCTION FOR LAFAYETTE COUNTY, 111 So. 521, said:

"The board of public instruction of a county is a county instrumentality, a corporation organized to conduct certain affairs in that particular county, and occupies the statutes of a trustee for the purposes for which it is created as to county property and county funds."

I am of the opinion, therefore, that the Act applies to judgments or decree obtained after the effective date of said Act on any bonds or other written evidence of indebtedness of any board of public instruction.

June 21, 1937.

RIGHT TO MAKE ALLOWANCE TO PUPILS FOR BOARD OR TRANSPORTATION

Dear Sir:

This is in reply to your letter of June 19th in which you request my opinion as to whether or not County School Boards of Public Instruction have authority to make allowance to pupils for board or transportation in lieu of their transportation in public conveyances. It is my opinion that such School Boards have no authority to make such allowances.

The School Boards would have no authority to provide for boarding pupils out of school funds, as that is not a school purpose. Any money paid out for transportation would, under the law, have to be paid directly for that purpose, which fact must appear on the warrant given for payment. See Section 508 (9), Compiled General Laws of Florida, Permanent Supplement.

March 9, 1937.

TRANSFER OF AMOUNTS BUDGETED FOR ONE PURPOSE SO AS TO RENDER SAME AVAILABLE FOR ANOTHER SCHOOL PURPOSE

Dear Sir:

This is in reply to your letter of March 4th, in which you enclosed letters from Superintendents of Public Instruction of St. Johns and Levy Counties.

You request my opinion as to whether or not amounts specifically budgeted for one purpose by County Boards of Public Instruction can be transferred so as to render the same available for other school purposes. The following is from the decision of the Supreme Court of

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Florida in the case of Board of Public Instruction vs. Kennedy, reported in 147 Southern Reporter 250, text page 252:

"The statutes relating to the functioning of the boards of public instruction mandatorily require that a detailed estimate shall be made of the expenses expected to be incurred in maintaining and operating the schools for the current year. It is also required that the monies to be raised for school purposes shall be likewise carefully estimated, such estimate to be made by the board after taking into consideration any other sources of income expected to be received. Section 561, C.G.L., section 454, R.G.S.; State ex rel. Board of Public Instruction of Gadsden County vs. Board of County Commissioners, 17 Fla. 418."

The following is Section 3, sub-section G of Chapter 16170, Laws of Florida, Acts of 1933:

"Any member of any Board of Public Instruction or County Budget Commissions of any County or any Superintendent of Public Instruction of any County, who, *without prior authority from the State Board of Education*, shall consent to or authorize the expenditure of any school funds in excess of the amount or amounts contained in the annual budgets or estimates of expenditures adopted by said Board and certified to the State Board of Education, and any member of any Board of Public Instruction of any County, or any Superintendent of Public Instruction of any County, who fails or refuses to comply with any order promulgated by the State Board of Education hereunder shall be guilty of misfeasance and malfeasance in office, and shall be subject to immediate removal from office." (Italics ours).

The effect of transferring funds budgeted for one purpose so as to make the same available for another school purpose is to amend the budget provided for in Section 561, Compiled General Laws of Florida, 1927. Prior to the passage of Chapter 16170, Laws of Florida, Acts of 1933, the right to do this would have been doubtful. See opinion of Honorable Fred H. Davis, Attorney General, reported in the Biennial Report of the Attorney General for the years 1929-1930, page 219. It is my opinion, however, that the provisions of Chapter 16170 hereinabove set forth permit, by implication, the State Board of Education to authorize the expenditure of school funds in excess of the amount or amounts contained in the annual budgets or estimates of expenditures adopted by the Boards of Public Instruction and certified to the State Board of Education. This would give the State Board of Education power to authorize the transfer of funds budgeted for one purpose so as to make them available for another school purpose.

SECTION 2

CLERKS OF CIRCUIT COURT

March 11, 1937.

ACCOUNTING FOR NATURALIZATION FEES REQUIRED SECTION 2865 C.G.L.

Dear Sir:

I am in receipt of your letter of the 4th instant stating that your view is as Clerk of the Circuit Court you should not be required to account for fees in naturalization cases coming to you as services under the Federal statutes which provide for naturalization in certain State Courts. See: 8 U. S. Code, Annotated, Section 402, which provides that the Clerk shall retain half of the fees provided therefor and remit the other half to Federal authorities. You also cite Lawyers Reports, Annotated (44 N.S.), 1913, page 322, decision of the Supreme Court of Oregon which is entitled *Frank S. Fields vs. Multnomah County, et al.* The holding in that Court is in line with your view that you should not be required to account to the State or County for fees received in naturalization proceedings.

Your attention is called to Section 2865, Compiled General Laws of Florida, 1927, relative to compensation of County Officials reading as follows:

"Each county official whose compensation for his official duties is paid wholly or partly by fees or commissions, or fees and commissions, shall receive as his yearly compensation for his official services from the whole or a part of the fees, or commissions so collected, the following sum only: All the net income from such office not to exceed five thousand dollars; sixty per cent. of the next three thousand dollars, or any fraction thereof; forty per cent. of the next two thousand dollars or any fraction thereof; and twenty-five per cent. of the rest and residue thereof; Provided, that no such official shall under the foregoing computation of remuneration receive from the income so collected by him more than seven thousand five hundred dollars per year."

Under Section 402 of Vol. 8 U.S.C.A. there are numerous decisions cited bearing on the question herein involved. There are a few cases, including the case which you cited, which hold that a Clerk of the Circuit Court should not be required to account for such fees, but a majority of the decisions cited hold the services rendered are official services and not personal services and that State statutes limiting and fixing the salary of Clerks of the Circuit Court are controlling and that such officers should account for fees received in naturalization proceedings the same as for other fees or commissions. I think it is sufficient

CLERKS OF CIRCUIT COURT

to cite you the ruling of the Supreme Court of the United States in the case of *Mulcrevy vs. San Francisco*, 231 U. S. 669, 58 L. Ed. 425, the second headnote of which reads as follows:

"The county clerk of the city and county of San Francisco cannot retain, as against the City and County, and for his own personal use, that portion of the fees collected by him as clerk of the superior court in naturalization proceedings which the clerk of any court collecting such fees is authorized, by the naturalization act of June 29, 1906, * * * to retain, where his salary is fixed at a specified sum by the charter, which further provides that all salaries shall be 'in full compensation for all services rendered,' and that 'every officer shall pay all monies coming into his hands as such officer, no matter from what source derived or received, into the treasury of the city and county.'"

In view of the above, it is my opinion that fees received by the Clerk of the Circuit Court in naturalization proceedings should be accounted for the same as other fees and commissions.

October 14, 1938.

BOND REQUIRED

Dear Sir:

I have your letter of October 13th requesting my opinion upon the following question:

Can the Clerk of the Circuit Court be required to give bond in an amount larger than set forth in the Statutes of \$5000.00?

You enclose copy of a letter from the Honorable Harry A. Johnston requesting an answer to the above question and also a copy of a letter from Mr. Johnston to the Assistant State Attorney at West Palm Beach, Florida. From this correspondence, it appears that a Deputy Clerk of the Circuit Court of Palm Beach County was alleged to be short some \$70,000.00 in his accounts. A careful examination of Mr. Johnston's opinion and the Sections of the Compiled General Laws of Florida that he cites, and the authorities that I have been able to find that throw any light upon this question, convince me that Mr. Johnston's opinion is eminently correct and that the question propounded as set out above must be answered in the negative.

The only statement that I have found directly upon this question is from the case of *State vs. Taylor, et al*, 72 N. W. 407. The Court held in that case that a bond for a larger amount than required that was voluntarily executed in a sum greater than that prescribed by statute may be enforced to the full amount thereof.

CLERKS OF CIRCUIT COURT

The Court then made this observation:

"There is no provision in the statute prohibiting parties from entering into a contract assuming a greater liability than that prescribed in the statute, or that makes a bond void for the excess. IT IS TRUE, TAYLOR COULD NOT HAVE BEEN REQUIRED TO FURNISH A BOND WITH A PENALTY IN EXCESS OF \$250,000. . ." (Emphasis ours).

The statute in that particular State required the bond to be in the sum of \$250,000.

In the case of Board of Commissioners of Logan County vs. Harvey, et al, 52 Pacific Reporter, 402, the Court said:

"An official bond which is exacted, in a case where the statute did not require the officer to give bond, as a condition precedent to the officer's being allowed to enter into and discharge the duties of such office, and to collect the emoluments thereof, is void."

It would seem to me that this is analogous to the proposition that a bond cannot be required in excess of the amount prescribed by statute, and if the County Commissioners required a larger bond than that prescribed by statute, the bond would be void as well as the condition. Of course, I do not mean by this to say that if a bond voluntarily given in a larger amount than required by statute, it would be void.

In 46 Corpus Juris, page 1064, I find this statement:

"When a bond with condition not required by statute is wrongfully exacted, under the penalty of forfeiture of office, it is of no legal effect, although such a variance is fatal only when the condition would impose a greater burden on the obligor than the law requires. * * *"

In this same paragraph, I find this rule:

"So, where a sum larger than required by law is named as the penalty, the bond, if voluntarily given, is good, although, according to some authorities, not good as to the excess."

Although I may be in full sympathy with the suggestion that a larger bond be given, I would not feel warranted in writing something into the law that is so plainly not contemplated, nor by inference can it be said it was intended.

I, therefore, join with Mr. Johnston in the suggestion that this is a matter that should be called to the attention of the Legislature and only by such action, can the present situation be remedied, and an act similar to Section 4850 (1) Volume 4, Permanent Supplement to the

CLERKS OF CIRCUIT COURT

Compiled General Laws of Florida, 1927, relating to clerks in counties having a population in excess of 150,000 would take care of this situation.

September 2, 1938.

**FEE FOR ENTERING RECORD OF REDEMPTION OF MUNICIPAL
TAX CERTIFICATES—SECTIONS 980 AND 4867, C.G.L., 1927—
SECTIONS 985 AND 1004, C.G.L., PERMANENT SUPPLEMENT**

Dear Sir:

I am in receipt of your letter of the 22nd ultimo, the body of which reads as follows:

"Under Section 980, Compiled General Laws, 1927, municipalities are required to record tax certificates with the clerk of the circuit court and to follow the same procedure as far as practicable as in the case of State tax certificates. Section 983 requires that all redemptions of land sold to the State or individuals be made through the clerk of the circuit court.

"In some counties the clerk of the circuit court makes the redemption of municipal certificates and collects the same fees as he would in the case of State tax certificates. In other counties the redemption is made by the city clerk or treasurer who notifies the clerk of the circuit court to enter the redemption on the tax sale record.

"Will you please advise what fee a clerk may charge for the service of showing the redemption on the tax sale records?"
Section 980, Compiled General Laws of Florida, 1927, reads as follows:

"Cities and incorporated towns, unless their special charters provide otherwise, shall conform to the State law in force with reference to the care, custody, sale and redemption of tax certificates in so far as they may be applicable, and shall record a list of such certificates with the clerk of the circuit court of their respective counties."

Sections 985 and 1004, Compiled General Laws of Florida, Permanent Supplement, provide that the Clerk of the Circuit Court shall receive the fee of 50c for the redemption or sale of each tax certificate and record thereof.

Your inquiry relates to notation by the Clerk of the Circuit Court of redemptions on the list of municipal tax certificates filed with the Clerk under said Section 980 when such certificates are redeemed through the municipal authorities instead of through the Clerk of the Circuit Court.

CLERKS OF CIRCUIT COURT

I do not think the fee of 50c allowed the Clerk of the Circuit Court, under Sections 985 and 1004, above referred to, for both redemption and record of same will apply in such cases since the service rendered by the Clerk is only a notation of redemption on the record.

Your attention, however, is called to Section 4867, Compiled General Laws of Florida, 1927, which is the fee bill of Clerks of the Circuit Court as recorder. You will note that the said Section provides among other things the following: "Recording any paper, first one hundred words or less .25" This item relates primarily to the recording of papers at length. However, the notation on the municipal tax certificate list in the Clerk's office of redemptions is a recording or record of such redemption, and in my opinion a fee of 25c to the Clerk for such service would be authorized under said item.

November 10, 1938.

**FEEES TO BE CHARGED IN SUITS BROUGHT INVOLVING WORK-
MEN'S COMPENSATION CLAIMS—SECTION 39(c) OF CHAPTER
17481, ACTS OF 1935, CHAPTER 18413, ACTS OF 1937**

Dear Sir:

I acknowledge receipt of your letter of October 28, 1938, in which you state:

"A number of Acts fix a flat fee to be charged by clerks of the circuit court in civil and other cases; as for example Chapter 16868, Acts of 1935, which is applicable to Pinellas County. Will you please advise whether the clerk should charge the fee of \$7.50 fixed by this act for cases under Section 39(c) of Chapter 17481, Acts of 1937, or whether he should charge fees under the general schedule for each petition and order?"

Section 39(c) of Chapter 17481, Acts of 1935, as amended, provides that an employer may institute proceedings for the recovery of damages or may compromise with a third person either without or after instituting such proceedings; provided, however, that no compromise shall be perfected unless the reasonableness thereof shall be approved by a Circuit Judge.

Chapter 16868, Acts of 1935, and similar acts, provide for a flat filing fee to be charged by the Clerk of the Circuit Court in civil cases instituted in counties affected by the Act.

Under the provisions of 39(c) of Chapter 17481, if an employer seeks to recover damages against a third person, he must institute a suit. When this is done, such action comes within the purview of Chapter 16868, Acts of 1935, and the flat filing fee must be paid.

CLERKS OF CIRCUIT COURT

Even though no suit is instituted against such third person and the employer compromises and files a petition, the Circuit Court and such Circuit Judge issues an order approving the compromise. This under the practice of the Department constitutes the institution of a suit, and it is my opinion the flat filing fee would have to be paid.

December 22, 1937.

OFFICIAL BOND—SUIT BY INDIVIDUAL

Dear Sir:

I am in receipt of your letter of the 18th instant in which you state that you and the State Attorney have been directed to proceed against the bond of a Clerk of the Circuit Court to indemnify the State and County. You further state that three suits have been filed by individuals against the surety of the said bond. You make inquiry if I have advised individuals that they could proceed against this bond without the Governor being made a party. You also make inquiry if it is my opinion that such a suit can be maintained by an individual who has been damaged.

Your attention is called to Section 4847, Compiled General Laws of Florida, 1927, relating to the official bond of Clerks of the Circuit Court and containing the following language: "Which bond shall be conditioned for the faithful discharge of the duties of his office." Upon reference to the bond in question on file in the office of the Secretary of State, I find that the same is conditioned according to the above quoted language.

Your attention is further called to Section 4201, Compiled General Laws of Florida, 1927, which contains the following language: "Any civil action at law may be maintained in the name of the real party at interest."

Answering your inquiry I beg to say I do not find that I have advised individuals in the premises. Neither do I find that I have rendered an opinion on the subject of your inquiry. However, I am inclined to the view of Hon. Fred H. Davis, former Attorney General, expressed in a letter under date of July 8, 1930, which appears on page 399 of the Biennial Report for the years 1929-1930, and reads as follows:

July 8, 1930.

"BOND OF PUBLIC OFFICER"

Dear Sir:

Suits upon official bonds of public officers such as deputy sheriffs are brought in the name of Doyle E. Carlton, Governor of the State of

CLERKS OF CIRCUIT COURT

Florida, for the use and benefit of A vs. B, Deputy Sheriff, as principal and ABC Company as surety.

The statute provides that the real party in interest on any contract may bring his suit to enforce such contract and this is held to be sufficient to authorize suing on a bond given to the Governor to enforce a right in favor of a private individual. You may either bring it against the officer alone or you may join his surety with him, as I understand the practice. * * *

In this connection, I refer you to the following citations:

5 Fla. & So. Digest, Clerk of Court, 72-75;

6 Fla. & So. Digest, Counties, 95-101;

5 R.C.L. 629-632; Clerks of Court, 14-16;

22 R.C.L. 517, Public Officers, 204;

First Nat'l Bank vs. Perkins, 81 Fla. 341, 87 So. 912;

Howard vs. U. S., 184 U. S. 676, 46 L. Ed. 754.

July 14, 1938.

PUBLISHING LEGAL NOTICE IN NEWSPAPER OWNED BY CLERK

Dear Sir:

I am in receipt of your letter of the 8th ultimo, the body of which reads as follows:

"Will you please advise whether the provisions of Section 7471, Compiled General Laws, 1927, would apply to advertisements under Chapter 18296, Acts of 1937, and other legal advertisements placed by a clerk of the Circuit Court in a newspaper which he owns in whole or in part?"

Section 7471 above referred to provides that no state or county officer shall purchase supplies or materials for public use from himself or from any firm or corporation in which he is interested, nor in any manner share in the proceeds of such purchase.

Chapter 18296 above referred to is what is commonly termed the Murphy Act, and provides for the sale of tax certificates and the giving of notice in a newspaper published in the county.

In reply I beg to say that in my opinion your inquiry should be answered in the negative.

CLERKS OF CIRCUIT COURT

March 18, 1937.

**RIGHT TO PAY PORTION OF INSURANCE PREMIUMS OF
EMPLOYEES, INCLUDING SAME AS EXPENSE OF
OPERATING OFFICE***Dear Sir:*

This is in reply to your letter of March 17th in which you request my opinion as to whether or not the Clerk of the Circuit Court may pay fifty per cent of the monthly premium on insurance for the employees of his office and deduct the rest of the premium from their salaries. It further appears that those employees who do not avail themselves of this opportunity for any reason were not given any corresponding increase in salary.

If the compensation of the employees of the Clerk's office were fixed by law and the amount of the insurance premiums paid would constitute an unauthorized increase in compensation then it would follow that the amounts of such insurance premiums could not be included as a proper item of cost of operating the office. If, however, the Clerk of the Circuit Court is authorized to fix the compensation of the employees of his office as he sees fit, then there could be no legal objection to payment of part of their compensation in the form of insurance premiums.

SECTION 3

CLERK CRIMINAL COURT OF RECORD

November 24, 1937.

FEES SAME AS CLERK CIVIL COURT OF RECORD DADE COUNTY—
CHAPTER 15920 OF 1933—CHAPTER 16872 OF 1935

Dear Sir:

I am in receipt of your letter of the 19th instant, the body of which reads as follows:

"Will you please advise whether the Clerk of the Criminal Court of Record of Dade County as Clerk of the Civil Court of Record should charge a fee of \$7.00 in each civil case under Chapter 16872, Acts of 1935, or whether he should charge a fee of \$7.50 in each civil case as charged by the Clerk of the Circuit Court under Chapter 15920, Acts of 1935."

In reply I beg to say in my opinion the fee to be charged by the Clerk of the Criminal Court of Record of Dade County as Clerk of the Civil Court of Record of said County should be \$7.00 in each civil case under Chapter 16,872, Laws of Florida, Acts of 1935, which is the later statute and also specifically fixes the fee of such Clerks in civil cases.

SECTION 4

CONSTABLE

August 25, 1937.

APPOINTMENT WHEN JUSTICE OF THE PEACE DISTRICT ABOLISHED

Dear Sir:

I am in receipt of your letter of the 17th instant transmitting a file with reference to Fred D. Tompkins of Citra, Florida, appointed Constable for District No. 16 in Marion County and requesting my opinion in the situation presented.

It appears from the file attached to your communication that the Grand Jury of Marion County has recommended that you vacate the commission of Fred W. Tompkins as Constable of Justice of the Peace District No. 16 in Marion County; that on October 20, 1936, the Board of County Commissioners of Marion County, by resolution, attached Precincts 13, 14, 16, 17, 26, 27 and 34 to Justice of the Peace District No. 1 to be thereafter a part of said District; that said precincts comprised Justice of the Peace District No. 16 in Marion County; that on February 5, 1937, you appointed F. D. Tompkins as Constable for District No. 16, Marion County. The records on file in the office of the Secretary of State show that he was commissioned Constable of said District on February 24, 1937, and that no Justice of the Peace was commissioned for said District. It further appears that in the November election of 1936 certain voters wrote in the name of Fred W. Tompkins and voted for and elected him to the position of Constable of said District No. 16.

I refer you to Article V, Section 21, of the State Constitution with reference to Board of County Commissioners dividing the County into Justice of the Peace Districts and I also refer you to Sections 5210 to 5213, Compiled General Laws of Florida, 1927, relating to the same subject.

The file indicates that Justice of the Peace District No. 16 of Marion County was abolished by resolution of the Board of County Commissioners of said County, which became effective for the term ending January 5, 1937, and that any appointment of a Constable for such abolished Justice of the Peace District was void. However, the file does not show conclusively that the statutes were fully complied with in the abolition of such District. For instance, if the abolition was under the provisions of Section 5210, above mentioned, there is no showing that the boundaries or limits of the Justice of the Peace District No. 1, to which District No. 16 was added, were spread upon the Minutes of the Board of County Commissioners as required by Section 5211. If the abolition was under the provisions of Section 5212 there is no sufficient showing that there was no elected, qualified or commissioned Justice of the Peace in said District No. 16.

CONSTABLE

In such situation I would suggest that it would be well to request complete showing in the above mentioned particulars or else suggest that the right of F. D. Tompkins, as Constable of Justice of the Peace District No. 16, in Marion County, Florida, be tested out in the Courts by quo warranto proceedings.

November 22, 1938.

AUTHORITY TO MAKE ARRESTS OUTSIDE OF DISTRICT

Dear Sir:

This will acknowledge receipt of your letter of the 9th, enclosing letter from Mr. N. B. Lunsford, Constable of District Number One of Bay County, and inquiring as to Mr. Lunsford's authority to make arrests outside of his District, when there is no other Constable or Justice of the Peace functioning.

Under Section 4595, Compiled General Laws 1927, a Constable has authority to serve process of the County Judge's Court and of the Justice of the Peace Courts in each District of said county where the same may be lawfully served.

Mr. Lunsford's letter does not state why the Justice of the Peace of the District in which the alleged crime was committed is not functioning. If there is a Justice of the Peace in this District, he would be the proper one to issue the warrant.

Under Section 8318, Compiled General Laws, 1927, which reads in part as follows: "All judicial officers of this State shall be conservators of the peace and committing magistrates, and may issue warrants against persons charged on oath with violating the criminal laws of the State * * *", the County Judge of Bay County, or either of the Circuit Judges of the Fourteenth Judicial Circuit, may issue a warrant, after a proper affidavit has been duly filed, for a criminal offense committed within their respective jurisdictions.

March 12, 1937.

**SERVING IN JUSTICE OF THE PEACE DISTRICT JOINED TO
ANOTHER DISTRICT**

Dear Sir:

I am in receipt of your letter of the 3rd instant, the body of which reads as follows:

"In a Justice of the Peace district in which no Justice of the Peace qualified, if the County Commissioners annexed it to an adjacent Justice of the Peace District, what would become

CONSTABLE

of the constable's commission who had qualified in such annexed district? Could he operate under his commission in the territory for which he was elected, and how?"

Your attention is called to the case of Conyers vs. State, 98 Fla. 417, 123 So. 817, the fourth headnote of which reads as follows:

"Under Const. art. 5, Sec. 21, providing that Justice of the peace elected shall hold office for four years, where justice of the peace has been elected and qualified to serve in any district, his office cannot be abolished during term for which he has been elected."

Your attention is further called to Article 8, Section 6 of the State Constitution, which provides for the election in each County of said County Officers among which are Constables. The said Section further provides that the term of office of all County Officers mentioned in this Section shall be for four years.

Since the office of Constable is a constitutional office and his term appears to be definitely fixed by the Constitution as four years, it is my opinion that after a Constable has been elected and qualified there is no authority for depriving him of such office. It is my view, therefore, that your inquiry should be answered in the affirmative. This question may easily be tried out in the Courts if desired.

SECTION 5

COUNTY COMMISSIONERS

November 8, 1938.

AUTHORITY TO EMPLOY AUDITOR

Dear Sir:

I acknowledge receipt of your letter of October 31, in which you state:

"I am today in receipt of the enclosed letters from the Clerk of the Circuit Court of Manatee County requesting information with reference to whether or not the Board of County Commissioners would have authority to employ a county auditor to audit all of the county officials of their county and to pay said auditor an annual salary of \$3,000.00 per year, also whether or not the Board of County Commissioners have authority to pay the salary of a game warden.

"In discussing the appointment of a deputy game warden with Honorable I. N. Kennedy, Game and Fresh Water Fish Commissioner he advises me that his department would appoint for that county a deputy game warden if the county would pay the salary and in several instances in the past such arrangements have been made by several counties of the State."

In this opinion I shall not answer your question as to the authority of the Board of County Commissioners to pay the salary of a game warden but I am answering that question in another opinion.

The Constitution contemplates the existence of a Board of County Commissioners, who are the general administrative officers of the county. Among the duties that are to be performed is that of the final approval of accounts against the county and the reports of the county fee officers.

In the case of *Molwin vs. Turner*, 167 So. 33, the Florida Supreme Court held that the County Commissioners of Dade County were authorized to pay a firm of accountants for auditing the accounts of the fee officers of that county. In the opinion the Court said:

"The audit of the books, records, and accounts of county officers is a county purpose, and by statute the counties have a property interest in the fees of county officers in excess of the net income allowed to each county officer. The county fee officers are by statute required to periodically account to the board of county commissioners the fees received by them respectively, and the county commissioners have the primary responsibility of seeing that the fees of such officers are correctly reported and the proper payments made to the county."

COUNTY COMMISSIONERS

Again in the opinion the Court states:

"The general and specific statutory powers of county commissioners as the general administrative and fiscal officers of the county are sufficient to support implied authority in the county commissioners to employ auditors for reasonable compensation to audit the books, records, and accounts of county fee officers; * * *."

It is my opinion that the Board of County Commissioners has authority to employ a county auditor to audit all the county officials of its county.

March 22, 1937.

AUTHORIZED TO ENLARGE JUSTICE DISTRICTS

Dear Sir:

Replying to your favor of March 20, with which you enclosed a copy of a resolution of the Board of County Commissioners of Columbia County, in and by which certain territory of Columbia County was added to Justice of the Peace District No. 10 and District No. 6. You ask to be advised whether or not the County Commissioners, under the law, were authorized to take such action. In reply permit me to say Article 5, Section 21, of the Constitution of the State of Florida reads as follows, to-wit:

"Section 21. The County Commissioners of each county shall divide it into as many justice districts, not less than two, as they may deem necessary. There shall be elected one justice of the peace for each of the said districts. He shall hold his office for four years."

Under the provisions of the Constitution quoted above and Section 5212 of the Compiled General Laws, 1927, it is my opinion that the County Commissioners would have the authority to enlarge the justice of the peace districts hereinabove mentioned.

April 14, 1938.

BOARDS OF PUBLIC INSTRUCTION—REIMBURSEMENT FOR
COMMISSION FEE—CHAPTER 14,669 OF 1931—
CHAPTER 15,903 OF 1933

Dear Sir:

I am in receipt of your letter of the 28th ultimo, the body of which reads as follows:

"Will you please advise whether or not it is proper for the Board of County Commissioners to reimburse individual com-

COUNTY COMMISSIONERS

missioners or other County officers, or for the Board of Public Instruction to reimburse the Superintendent or Board Members for the commission fee of \$10.00 paid under Chapter 14669, Acts of 1931?"

In reply I beg to say in my opinion County Commissioners, County Superintendents of Public Instruction and County Boards of Public Instruction cannot be reimbursed for their official commission fee of \$10.00 required to be paid to the Secretary of State under Chapter 14669, Laws of Florida, Acts of 1931, unless there is some specific provision for such payment. In this connection, your attention is called to Chapter 15903, Laws of Florida, Acts of 1933, which provides for such reimbursement to members of Boards of Public Instruction in counties having a population of over 155,000 according to the last Federal Census.

I do not find any other statute permitting such reimbursement.

December 14, 1938.

COUNTY—LOCAL HEALTH UNITS—RIGHT TO BORROW AGAINST
ANTICIPATED PROCEEDS OF THE TAX UNDER
CHAPTER 14906, ACTS OF 1931

Dear Sir:

You request my opinion as to the following problem: The Board of County Commissioners of Lake County have made provision in their budget for a County Health Unit and taxes for same have been levied pursuant to Chapter 14906, Laws of Florida, Acts of 1931. The Health Unit began work on October 1st before the proceeds of the tax levy became actually available. Under the provisions of Chapter 14906 the proceeds of the tax levy therein provided for are remitted to you as State Treasurer for the account of the State Board of Health, subject to expenditure by the State Board of Health solely for the purpose of carrying out the intent and object of said statute in the particular county involved.

Under these circumstances does the Board of County Commissioners of Lake County have authority to borrow money against the anticipated proceeds of the Special Tax Levy to which reference is hereinabove made?

It is significant to note that the provisions of Section 2 of Chapter 14906 require that the proceeds of the special tax levy " * * * when collected, shall be paid to the State Treasurer for the account of the State Board of Health." The words "when collected" must be construed as an express limitation on the appropriation of the proceeds of the special tax levy. In other words, the appropriation does not become completely effective until actual collection of funds is accomplished. It is therefore

COUNTY COMMISSIONERS

my opinion that the County Commissioners do not have the legal authority to borrow money against anticipated revenue to be derived from the special tax levy provided in Chapter 14906.

April 8, 1938.

OYSTER REHABILITATION—STATE CONSERVATION DEPARTMENT

Dear Sir:

I am in receipt of your letter of the 7th instant, the body of which reads as follows:

"The Conservation Department and the Federal Government will agree with the Board of County Commissioners of Levy County to plant oysters in the vicinity of Cedar Keys of Levy County, Florida, if the Board of County Commissioners will agree to pay a certain sum of money to assist in the expenses of the project.

"The Board of County Commissioners at the present time has no item of the fund in their Budget whereby such an expenditure could be made. The Conservation Commissioner has stated that if the Board will pass a resolution agreeing to put in their Budget for the next fiscal year an amount of \$300.00 per month for the first six months and \$150.00 a month for the next six months that the Commissioner and the Federal Government would immediately start the planting of the oysters in their county.

"Section 7465, Compiled General Laws of 1927 seems to prohibit the Board of County Commissioners voting to pay illegal claims or excess indebtedness.

"Please give me your opinion as to whether or not the Board of County Commissioners would have authority to pass a resolution at this time stating that they would put in their Budget for the next fiscal year the amount of money as above stated to assist the State Conservation Department and the Federal Government in paying for this project."

Your attention is called to Section 1811, Compiled General Laws of Florida, 1927, relating to the shell fish industry and containing the following language:

"* * * The board of county commissioners of the several counties of this State, in order to accomplish the purposes of this Article, are hereby authorized and permitted to appropriate and expend such sum or sums as they may deem proper for the purpose of planting or transplanting oyster shell or cultch, out of any sum in the county treasury not otherwise appropriated."

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In view of the above, it appears that the Board of County Commissioners would be authorized to pass a resolution stating that they would put in their budget for the next fiscal year the amount of money stated to assist the State Conservation Department and the Federal Government in paying for the proposed project for planting oysters in the vicinity of Cedar Keys in Levy County.

April 13, 1938.

PAYMENT OF MILEAGE AND OTHER TRAVELING EXPENSES—
CHAPTER 16894, ACTS OF 1935

Dear Sir:

This is in reply to your letter of March 22nd in which you state the following:

"Section 1 of Chapter 16894, Acts of 1935, provides that the annual salary of County Commissioners of Volusia County shall be \$1,800.00, payable in monthly installments.

"Please advise me if the County Commissioners of Volusia County are entitled to mileage for the use of their personally owned automobiles or any other traveling expenses."

Assuming, for the purpose of this opinion, the constitutional validity of Chapter 16894, Laws of Florida, Acts of 1935, and further assuming its applicability to Volusia County, it is my opinion that certain necessary items of traveling expenses may legally be paid to the County Commissioners. To begin with, the statute to which you refer is silent on the question of traveling expenses and makes provision only for compensation. Compensation is entirely different from traveling expenses for the latter is intended to be reimbursement for actual expenditures made by an individual Commissioner on behalf of the County. See collection of cases in annotation of 106 A.L.R. 781 to 783.

In the case of *Adams vs. Lott*, 150 So. 596 the Supreme Court of Florida has passed upon the legality of paying the traveling expenses of County Commissioners to Tallahassee to attend a meeting of the State Road Department. In approving the legality of such expenditure the Supreme Court said:

"Was the expense of the trip to the state capital for the purpose of executing a mission for St. Lucie county's direct benefit, a lawful charge to be paid by the county commissioners out of their budget appropriation of \$700 for general overhead expenses? A majority of the court are of the opinion that it is, for the reasons hereinafter set forth.

COUNTY COMMISSIONERS

"The county budget law under which the appropriation of \$700 for general overhead expense was made, authorizes the county commissioners to include in their budgets *expenditures contemplated* for the next fiscal year, for county purpose. These authorized appropriations for *contemplated* expenditures embrace estimates of necessary and ordinary expenses and estimates for special and extraordinary expenses. The *adoption* of such estimates gives the same 'the force and effect of fixed appropriations.' See Section 2306, Comp. Gen. Laws, section 1528, Rev. Gen. St. Consequently, when the county commissioners of St. Lucie county adopted their budget containing the item, 'General overhead expense, \$700.00,' that item, *under express authority of law*, became from that time forward a 'fixed' appropriation of that sum of money for 'general overhead expenses' of the board of county commissioners in executing any lawful county purpose or function. It may be likened in this respect to legislative appropriations made by the Legislature for general legislative expenses. And such county appropriations, when made by county commissioners under direct authority of a statute authorizing them, are as valid for county purposes as similar appropriations when made by the Legislature are valid for state purposes.

"If, then, the county appropriation made in the county budget for 'General overhead expenses, \$700.00,' was a valid county appropriation, as we have demonstrated that it was under the county budget law, can it be said that the chancellor should have enjoined the *payment* of the expense bill incurred by the committee of the county board, when it appears that such expense bill was incurred pursuant to a resolution of the board of county commissioners directing the expense to be incurred by the committee for making an official trip to Tallahassee to attend the meeting of the state road department with reference to matters of county interest? A majority of the court are of the opinion that in the absence of charges and proof of facts tending to show fraud or abuse committed by the board or its committee under the guise of incurring an ostensibly authorized expenditure for a county purpose, that the injunction was properly denied." (*Italics ours*).

It is to be noted that the Supreme Court called particular attention to the fact that the traveling expenses incurred were authorized and approved by a resolution of the Board of County Commissioners and were incurred pursuant to a budget regularly adopted under the provisions of Section 2306, Compiled General Laws of Florida, 1927. It is my opinion that such requirements must be complied with in order to constitute traveling expenses as a proper item of expenditure.

COUNTY COMMISSIONERS

In order to be considered legal expense accounts must conclusively show that they were incurred strictly for county purposes. They should contain detailed information similar to that required to be stated in expense accounts of State officers and employees. Any doubt arising from failure of the records to disclose the nature of the traveling expense item as being strictly a reimbursement for money advanced should be resolved against the legality of the expenditure. In view of the fact that the statute provides for the payment of 5c per mile to State officers and employees traveling in their private automobiles that amount would probably be considered reasonable reimbursement for gasoline, oil and depreciation.

March 11, 1937.

TRAFFIC OFFICERS—WHEN AUTHORIZED TO EMPLOY

Dear Sir:

I am in receipt of your letter of the 10th instant enclosing copy of communication to you from Hon. J. L. McMullen, Clerk Circuit Court Suwannee County, under date of February 26, 1937, in which he states that no provision was made in the County Budget for 1936-1937 for County Traffic Officers and makes inquiry if the County Commissioners would be authorized to employ a County Traffic Officer and pay him from the Fine and Forfeiture Fund of said County in view of the fact that the State Patrol Officers have been removed from the roads of the State.

Under Section 2879, Compiled General Laws of Florida, 1927, County Traffic Officers are payable from the Fine and Forfeiture Fund of the County. Under Section 2306, Compiled General Laws of Florida, 1927, as amended by Chapter 16,286, Laws of Florida, Acts of 1933, the County Commissioners are required to make up an annual budget and set out every item of expenditure contemplated or reasonably to be anticipated during the year. It further provides that the adoption of said estimates shall give the same the force and effect of fixed appropriations, which shall not be altered or amended or exceeded, nor shall the expense estimated under one head be paid from the estimate from any other expense with the provision, however, for transfer from one item to another with the approval of the State Comptroller and in counties where there is a Budget Commission with the approval of such Budget Commission.

It is my opinion that the County Commissioners of a County may employ such a County Traffic Officer if there are sufficient funds available in the Fine and Forfeiture Fund over and above the contemplated requirements for the remainder of the year or if there is a sufficient amount for such purpose available in any other fund and a transfer of the same should be approved by the State Comptroller and by the

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COUNTY COMMISSIONERS

County Budget Commission, if any. Otherwise, I do not think such employment would be authorized.

November 3, 1937.

TRANSFER OF FUNDS UNDER CHAPTER 18023, ACTS OF 1937

Dear Sir:

I acknowledge receipt of your letter of October 18, in which you state:

"I am today in receipt of a resolution from the Board of County Commissioners of Bradford County seeking to transfer \$700.00 from their Bond Refunding Account to a Building Fund for the purpose of purchasing a suitable site for the erection of a Farmers Market to meet the requirements of the Works Progress Administration. They are seeking to make this transfer under the provisions of Chapter 18023, Acts of 1937.

"Please give me your opinion as to whether or not the above mentioned Chapter gives the Board of County Commissioners and this office authority to transfer monies from a Bond Fund to some other fund when ever it may be necessary to meet the requirements of the U. S. Government with reference to obtaining grants of Federal Funds in connection with the progress of the Public Works Administration, also please give me your opinion as to whether or not the above mentioned Chapter would give the Board of County Commissioners or the Board of Public Instructions authority to exceed their budget for the purpose of obtaining grants from the Federal Government."

It is my opinion that funds cannot be transferred from a sinking fund account for the purposes mentioned in Chapter 18023, Laws of Florida, Acts of 1927, as such funds, as I have held before, are trust funds accumulated for the purpose of paying outstanding bonds or other indebtedness.

I am of the opinion that under Chapter 18023 the governing boards are authorized to exceed their budgets for the purpose of obtaining grants from the Federal Government.

SECTION 6

COUNTY JUDGES

September 24, 1937.

COMPENSATION—CHAPTER 16,927 OF 1935

Dear Sir:

I am in receipt of your letter of the 10th instant, the body of which reads as follows:

"Section 3 of Chapter 16927, Acts of 1935, relates to the compensation of the County Judge of Gulf County. Will you please advise whether the guarantee fixed by this Section is \$1,200.00 per annum plus fees received from probate work or \$1,200.00 per annum plus all fees other than civil and criminal fees. In other words, are the Judge's fees on hunting and fishing, marriage, and occupational licenses included."

Section 3 of Chapter 16,927, Acts of 1935, reads as follows:

"That the County Judge of all counties of the State of Florida having a population of not less than 3,150 and not more than 3,200 according to the last Federal census, shall receive as compensation *for his services* the fees now fixed by law for Civil and Criminal work, provided however, should such fees amount to a sum less than \$1,200.00 per annum, the County Commissioners of such counties, shall draw their warrant upon the Fine and Forfeiture Fund of such counties for a sum of money sufficient to make up such deficiency, payable in twelve monthly installments. Providing further that in addition to the above compensation provided for, the County Judge shall receive such fees as is now provided by law for Probate Work."

In reply to your inquiry I beg to say in my opinion said Section fixes the total and maximum salary of the County Judge in such counties at \$1200.00 plus only such fees as are provided by law for probate work.

March 26, 1937.

COST BILLS, LIABILITY OF COUNTY COMMISSIONERS

Dear Sir:

I am in receipt of your letter of the 25th instant enclosing communication to you under date of the 13th instant from Hon. L. E. Guess, County Judge of Glades County, to which is attached communications under date of February 2nd and March 2nd, 1937, from the Clerk of the Board of County Commissioners addressed to Judge Guess, together with cost bills of the County Judge in the trial of three criminal

COUNTY JUDGES

cases for intent to defraud. The letters from the Clerk of said Board indicate that said cost bills were not approved in line with the policy of the Board not to approve cost bills where the County is used as a collection agency. You request my opinion as to the liability of the County Commissioners to pay the bills in question.

In reply your attention is called to paragraph 12 of Section 2153, Compiled General Laws of Florida, 1927, which is among the powers and duties of County Commissioners prescribed by said Section as follows: "To approve all accounts against the counties." Your attention is further called to Section 2835 of the same compilation reading as follows:

"The county commissioners shall have the right to reject all or any portion of any account which is not a valid claim against the county, and shall allow and pay the same only when it is just, correct and reasonable, and no constructive mileage or illegal or unnecessary item or charge in any frivolous case shall be allowed."

Immediately under said Section is cited the case of *State vs. McMillan*, 55 Fla. 246, 45 So. 882, but on referring to the same I do not find that it applies in the instant case.

Your attention is further called to the case of *McLeod vs. Santa Rosa County*, 116 Fla. 838, 157 So. 37, which appears to uphold the above quoted statute, Section 2835, with reference to constructive fees but does not apply to that part of the statute relating to charges in frivolous cases. These are all of the citations found relating to said Section.

You will note that the above statute authorizes the County Commissioners to refuse to pay charges in frivolous cases and it would appear that they would have implied powers to determine whether a case is frivolous.

All statutes are presumed to be valid until otherwise declared by a competent Court and officers of the Executive Department are without authority to declare a legislative Act unconstitutional. See: *State ex rel. A. C. L. R. Co. vs. State Board of Equalizers*, 84 Fla. 592, 94 So. 681, the first headnote of which reads as follows:

"Every law found on the statute books is presumptively constitutional, until declared otherwise by the court, and an officer of the executive department of the government has no right or power to declare an act of the Legislature to be unconstitutional, or to raise the question of its constitutionality without showing that he will be injured in person, property, or rights by its enforcement."

COUNTY JUDGES

While under the above quoted statute the County Commissioners appear to have authority to pass upon the question of whether or not a trial by the County Judge is frivolous, such authority is not final and may be passed upon and determined by the Courts. See: Section 2837, Compiled General Laws of Florida, 1927, reading as follows:

"Whenever any officer shall have presented to the county commissioners any bill or account against any county and such bill or account or any part thereof shall have been rejected by the county commissioners, such officer shall have the right to test the validity of his said charge, bill or account, by suit against the county, and shall have the right to recover a judgment for the amount or such part thereof as shall be a legal claim for services rendered in the performance of his duty, with interest thereon: Provided, that no such claim shall be sued on more than one year after its final rejection by the county commissioners."

December 3, 1937.

FEES—SEARCH AND COPY OF MARRIAGE RECORD

Dear Sir:

I am in receipt of your letter of the 24th ultimo, the body of which reads as follows:

"Will you please advise what fees, if any, a county judge may charge for searching the marriage license records and making certified copies of any marriage license recorded."

In reply I beg to say that the only statute which I find authorizing payment for the above mentioned services in Section 3084, Revised General Statutes of Florida, 1920, inserted below Section 5237, Compiled General Laws of Florida, 1927, containing the following:

"Copying any records or paper, first 100 words	.20
Each additional 100 words and fraction thereof	.10
Seal, affixing to any paper other than those herein specially mentioned	.10
Searches of one year's standing or less	.10
Of more than one year's standing	.15"

July 2, 1937.

COST, INVESTMENT STATISTICAL SERVICES, SECTION 2866 C.G.L.

Dear Sir:

I am in receipt of your letter of the 29th ultimo, the body of which reads as follows:

"Please advise this office whether or not the cost of investment statistical and counsel services are proper expenses

COUNTY JUDGES

of office of a county judge under Section 2866, Compiled General Laws, 1927."

Attached to your letter is a communication under date of the 24th ultimo * * *, addressed to this office, which letter was referred to your Department. Judge * * * explained at some length the furnishing of statistics by companies for the convenience of those having the investment of trust funds.

Such statistical information may be convenience, but the same does not appear to be necessary to the office of the County Judge, and I fail to find any statutory authority authorizing the payment by the County Judge or the County for statistical services of such nature that may be rendered by statistical companies.

SECTION 7
JUSTICES OF THE PEACE

August 26, 1937.

COMPENSATION—COMMITMENTS TO COUNTY JUDGE'S COURT—
CHAPTER 18,002 OF 1937—SECTION 2833, C.G.L. 1927

Dear Sir:

I am in receipt of your letter of the 27th instant, the body of which reads as follows:

"Chapter 18002, Acts of 1937, eliminates criminal trial jurisdiction of Justices of the Peace except in Volusia County. This Act does not appear to affect their jurisdiction as committing magistrates.

"Section 2833, Compiled General Laws, 1927, provides that a committing magistrate may not be paid for preliminary hearings when no information is filed nor indictment found against the person held to answer to a criminal charge. There appears to be no provision for informations or indictments in County Judges' Courts.

"In view of the foregoing, will Justices of the Peace be entitled to receive compensation for preliminary hearings when the accused is bound over to the County Judge's Court under Chapter 18002, Acts of 1937."

In reply to your inquiry I beg to say in my opinion the same should be answered in the negative. This, of course, applies only to cases committed to the County Judge's Court.

In this connection you will note that Section 7465 and 7466, Compiled General Laws of Florida, 1927, penalize members of the Board of County Commissioners and Clerk of the Circuit Court for payment of any claim against the county not authorized by law.

May 12, 1937.

CONTINUING IN OFFICE UNTIL SUCCESSORS QUALIFIED

Dear Sir:

I am in receipt of your letter of the 1st instant, the body of which reads as follows:

"I was elected November sixth 1934 to the office of Justice of the Peace, in District No. 4, Highlands County, Florida, and was subsequently appointed by Governor Sholtz for a term of two years. I did not seek reelection in 1936. Mr. Russel Hendry

JUSTICES OF THE PEACE

was elected in the General Election of 1936 to this office, but refused to qualify. I have been holding the office and performing the duties of said office since I was appointed in 1934.

"Now what I want to know is this—Am I legally the Justice of the Peace until my successor qualifies, or should I have quit acting when my two years were up?"

In reply your attention is called to Article XVI, Section 14 of the State Constitution, which reads as follows:

"All state, county and municipal officers shall continue in office after the expiration of their official terms until their successors are duly qualified."

In view of the above you are authorized to continue in office unless you should choose to resign, in which case your successor could be appointed.

October 1, 1937.

CRIMINAL JURISDICTION—ARTICLE V, SECTIONS 18 AND 22 OF STATE CONSTITUTION—SECTIONS 8278 AND 8290, C.G.L. 1927

Dear Sir:

I am in receipt of your letter of the 14th ultimo, making inquiry if Justices of the Peace have any criminal trial jurisdiction in counties where County Courts are established.

Article V, Section 18 of the State Constitution provides that County Courts shall have jurisdiction of misdemeanors.

Section 8278, Compiled General Laws of Florida, 1927, provides that the County Court has jurisdiction of all misdemeanors except in counties where Criminal Courts of Record are established and in such counties they shall have no criminal jurisdiction.

Article V, Section 22 of the State Constitution provides that Justices of the Peace shall have jurisdiction in such criminal cases, except felonies, as may be prescribed by law.

Section 8290, Compiled General Laws of Florida, 1927, provides that in counties where there are County Courts Justices of the Peace shall have power to hold a Court to try and determine all misdemeanors committed in their respective districts punishable by fine not exceeding \$100.00 or by imprisonment not exceeding three months, or by both such fine and imprisonment.

Section 8290 appears to give Justices of the Peace limited criminal jurisdiction in the trial of misdemeanors in counties where there are

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County Courts. However, in a county having a Criminal Court, or both a County Court and a Criminal Court, a Justice of the Peace would not appear to have any trial jurisdiction in criminal causes under the ruling of our Supreme Court in the case of *Jackson vs. State*, 33 Fla. 620, 15 So. 250, the headnote of which case reads as follows:

"In counties where there are criminal courts of record, justices of the peace have, in criminal causes, no trial jurisdiction, as distinguished from mere power, as committing magistrates, to inquire into criminal charges with reference to the detention for trial, or bail or discharge, of the accused."

The Supreme Court does not appear to have passed upon the trial jurisdiction of Justices of the Peace in counties having a County Court but no Criminal Court, and in the absence of any such ruling by the Courts said Section 8290, giving limited jurisdiction to Justices of the Peace in counties where there are County Courts would appear to be still effective, except in counties where there are also Criminal Courts.

November 8, 1937.

FEES—COMMITMENTS WHEN NO INFORMATION FILED OR INDICTMENT FOUND—SECTIONS 8318 AND 8488, C.G.L. 1927

Dear Sir:

Answering your letter of the 6th instant, I beg to say I do not think Section 8488, Compiled General Laws of Florida, 1927, originally passed in 1893 and relating to fees of committing magistrates when persons are committed to a County Court, Criminal Court of Record or Circuit Court and information is not filed nor indictment found against such person can affect or change the meaning of Section 2833, Compiled General Laws of Florida, 1927, subsequently passed in 1895, which provides when a committing magistrate holds to bail or commits a person to answer to a criminal charge and an information is not filed nor indictment found against such person, such costs and fees of such committing trial shall not be paid except the cost of executing the warrants.

You call attention also to Section 8215, Compiled General Laws of Florida, 1927, which provides that the Grand Jury may present every offense against the penal laws of this State. You make inquiry if it would be the proper procedure for you to bind defendants over to the Circuit Court for the filing of informations or the finding of indictments by the Grand Jury. The last paragraph of your letter indicated that such procedure would be desirable for your Court with a view to securing payment for your services as a committing magistrate.

In reply your attention is called to Section 8318, Compiled General Laws of Florida, 1927, which provides that committing magistrates may commit offenders to jail or recognize them to appear before the *proper*

JUSTICES OF THE PEACE

Court at the next ensuing term thereof. The proper Court, as I take it, is the Court that would have trial jurisdiction of the particular case. It, therefore, follows that commitments should be made to the Court having trial jurisdiction without regard to whether or not indictments may be found or information filed in such Court.

The Attorney General is only authorized to advise State officials and State Departments, and this letter is not to be considered as an official opinion from this office but I have undertaken only to give you my views in the premises.

December 15, 1937.

FEES—CHAPTER 18002 OF 1937

Dear Sir:

I am in receipt of your letter of the 14th instant, the body of which reads as follows:

"Chapter 18002, Acts of 1937, eliminated the criminal trial jurisdiction of justices of the peace in certain counties. This act did not affect their duties under Section 22 of Article V of the Constitution as committing magistrates. On August 26, 1937, you advised that Section 2833, Compiled General Laws of 1927, which provides that a committing magistrate may not be paid for preliminary hearings when on information is filed nor indictment found against the person held to answer to a criminal charge, would prohibit the payment of fees to justices for preliminary hearings in which the defendant was bound over to the county judge's court.

"It now develops that in some counties justices have been issuing warrants returnable to the county judge instead of to themselves. In such cases, is the justices entitled to any fees or will Section 2833 still control, as the fact that the warrant is returnable to the county judge still does not satisfy the condition of the filing of an information."

Your attention is called to Article V, Section 22 of the State Constitution, with reference to Justices of the Peace, which provides as follows:

"And he shall have power to issue process for the arrest of all persons charged with felonies and misdemeanors not within his jurisdiction to try and make the same returnable before himself or the County Judge for examination, discharge, commitment or bail of the accused."

Your attention is also called to the proviso in Section 2833, Compiled General Laws of Florida, 1927, reading as follows:

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"Provided, that when a committing magistrate *holds to bail or commits a person* to answer to a criminal charge and an information is not filed or an indictment found against such person, the costs and fees of *such committing trial* shall not be paid by the county, except the costs of executing the warrants."

You will note that I have underscored certain words in the last above quotation.

Under the above quoted provision prohibiting the payment of cost of a committing magistrate the prohibition does not appear to apply when the Justice of the Peace issues a warrant returnable to the County Judge.

March 2, 1937.

FEES OF CLERK FOR COPY OF INDICTMENT TO
APPLICANT FOR PARDON

Dear Sir:

I have a letter from your predecessor, ——— under date of the 26th ultimo enclosing copy of letter from Messrs. Stockton, Ulmer & Murchison, Attorneys at Law, Barnett National Bank Building, Jacksonville, Florida, and requesting my advice with reference to same. The inquiry relates to Section 8494, Compiled General Laws of Florida, 1927, which requires the Clerk or the Justice of the Peace to furnish copy of indictment or information to any applicant for pardon free of charge and without delay. The suggestion in the above letter is to the effect that while a charge for such service may not be made against the applicant for same, the officer would be entitled to pay for his services from the County.

In reply I beg to say in my opinion the above mentioned statute was not intended to authorize a charge for such service against the County. The statutes of the State impose many additional duties on various officials, both State and County, without providing compensation for the same. This statute is not dissimilar in such respect.

May 11, 1937.

HOLDING MORE THAN ONE OFFICE

Dear Sir:

I am in receipt of your letter of the 30th ultimo making inquiry if a Justice of the Peace may hold the position of City Recorder.

In reply your attention is called to Section 15 of Article XVI of the State Constitution, which provides that "no person shall hold, or per-

JUSTICES OF THE PEACE

form the functions of, more than one office under the Government of this State at the same time." Your attention is further called to the decision of our Supreme Court in the case of Attorney General vs. Connors, 27 Fla. 329, 9 So. 7, in which it was held that the Sheriff of a County might hold the office of City Marshal. In the body of the opinion the Court referring to the above provisions of the Constitution said that the inhibition in the Constitution is aimed solely and entirely against offices held under or whose duties appertain to the Government of the State, and that after careful and exhaustive search the Court was unable to find any authority that holds that the Government of municipalities forms any part of the Government of the State as such, considered in the broad sense of the term "State Government."

In view of the foregoing it appears that a Justice of the Peace may hold the position of City Recorder without violating the constitutional provision above mentioned.

June 26, 1937.

JURISDICTION

Dear Sir:

I have received numerous requests during the past few weeks concerning the effect of Chapter 18002, enacted at the 1937 session of the Florida Legislature, on the jurisdiction of Justices of the Peace. The following are Sections 1, 2 and 3 of Chapter 18002, in which the important provisions of the Act are set forth:

"Section 1. That Section 5995, Revised General Statutes of Florida, 1920, same being Section 8289, Compiled General Laws of Florida, 1927, be and it is hereby amended to read as follows:

'In Counties where there are no County Courts or Criminal Courts of Record, the County Judges shall have power to hold a Court to try and determine all misdemeanors committed in their respective counties, punishable by fine not exceeding Five Hundred (\$500.00) Dollars or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment.'

"Section 2. Nothing contained in this Act shall be construed to in any wise affect the present criminal jurisdiction of Justices of the Peace in any County of the State of Florida having a population of over 50,000 according to the last preceding State census.

"Section 3. That all proceedings or cases now pending in the Justice of the Peace Courts shall not be affected by the provisions of this Act."

JUSTICES OF THE PEACE

In the interest of clearness I state my opinion under the following heads:

EFFECTIVE DATE: The Act became effective upon its approval by the Governor on June 2, 1937.

EFFECT ON TRIAL JURISDICTION: The Act has the effect of transferring the trial jurisdiction of misdemeanors to the County Judges in Counties under 50,000 population where there are no County Courts or Criminal Courts of Record when said misdemeanors are punishable by a fine not exceeding \$500.00 or by imprisonment not exceeding six months, or by both such fine and imprisonment. The practical effect of the Act is to eliminate the trial jurisdiction of Justices of the Peace in such Counties.

JURISDICTION AS COMMITTING MAGISTRATE: The Act does not affect the jurisdiction of the Justice of the Peace as a committing magistrate. This jurisdiction is derived both from Article V, Section 22 of the Constitution and from Section 8318, Compiled General Laws of Florida, 1927. Article V, Section 22 of the Constitution provides in part that the Justice of the Peace "shall have power to issue process for the arrest of all persons charged with felonies and misdemeanors not within his jurisdiction to try, and make the same returnable before himself or the County Judge for examination, discharge, commitment or bail of the accused." Section 8318, Compiled General Laws of Florida, 1927 provides that all judicial officers of the State shall be conservators of the peace and committing magistrates.

PROCEDURE TO BE FOLLOWED: Justices of the Peace shall follow the same procedure as committing magistrates in regard to misdemeanors which they formerly had jurisdiction to try and determine but which is now vested in the County Judge as they have followed prior to this time in regard to offenses within the exclusive jurisdiction of other courts. In other words, the Justice of the Peace has the power to issue process for the arrest of persons charged with such misdemeanors which he no longer has jurisdiction to try, and make the same returnable before himself or the County Judge for examination, discharge, commitment or bail of the accused.

CONSTITUTIONALITY: Several inquiries have been made concerning the constitutionality of this Act, particularly with reference to the provision that it shall not affect the present criminal jurisdiction of Justices of the Peace in any County having a population of over 50,000 according to the last preceding State census. It is sufficient to say that every Act of the Legislature, valid on its face, is presumed to be constitutional until the Courts have declared it to be otherwise.

I trust that this will sufficiently answer most of the inquiries which may be made concerning Chapter 18002.

JUSTICES OF THE PEACE

April 9, 1938.

VACANCIES—REMOVAL FROM DISTRICT

Dear Sir:

I am in receipt of your letter of the 15th ultimo, the body of which reads as follows:

"Will you please advise me if a Justice of the Peace who has been elected to office in a District can move his place of residence out of such District and still continue to serve as Justice of the Peace in the District in which he was elected while he was a resident of such District."

In reply your attention is called to Section 461, Compiled General Laws of Florida, 1927, which provides that every office shall be deemed vacant in certain enumerated cases, the fourth enumerated case being "by his ceasing to be an inhabitant of the State, district, county, town or city for which he shall have been elected or appointed."

I think that this Section means that the officer in question must have permanently—and not temporarily—ceased to be an inhabitant of his district.

Therefore, if the officer has only temporarily removed himself from his district, he has not vacated his office under this Section of the law; but if his removal is permanent, he has vacated such office.

SECTION 8

SHERIFFS

August 30, 1937.

**COST BILLS, PROCEDURE FOR PAYMENT. SEE SECTION 2306 AS
AMENDED BY CHAPTER 16286**

Dear Sir:

I acknowledge receipt of your letter of August 27, enclosing a letter from Honorable W. J. Gardiner, County Attorney for Volusia County, in which he states that Volusia County is not operating under the Budget Act of 1933.

In a previous letter, Mr. Gardiner stated that the 1936-37 budget for the Sheriff has been exhausted but there are monies held in the Fine and Forfeiture Fund available for payment to Sheriff Stone. In his letter, Mr. Gardiner further stated that he was of the opinion that the County Commissioners should approve the cost bills of the Sheriff, regardless of whether or not the Sheriff's budget item for cost statements had been exhausted but that the County Commission, before paying such, and Sheriff Stone, before receiving such, would like to have the approval of the Auditing Department or of your department, based upon an opinion of the Attorney General.

On the 25th day of April, 1935, I called attention in an opinion relative to justices of the peace, which said opinion is printed on page 230 of the Biennial Report of the Attorney General for 1935-36, that where the amount budgeted for justices of the peace is exhausted that under Section 2306, as amended by Chapter 16286, Acts of 1933, provision was made for transfer of items of expenditure to other items of expenditure upon resolution adopted by the Board of County Commissioners when approved by the Comptroller of the State.

It would, therefore, be my opinion that the County Commission would be justified in making this payment upon following the procedure set forth in Section 2306, as amended by Chapter 16286, Acts of 1933.

August 11, 1938.

EXECUTIVE OFFICERS OF COUNTY JUDGES' OR JUSTICES' OF THE PEACE COURTS

Dear Sir:

I am in receipt of your letter of the 9th instant, the body of which reads as follows:

"Sections 8294 and 8296, Compiled General Laws, 1927, provide that the sheriff or any constable may be the executive officer of the justice of the peace courts and the county judge's court, respectively. Will you please advise under what circumstances each of these officers would serve as the executive officer of each of these courts?"

SHERIFFS

I quote you Sections 8294 and 8296, together with Section 4573, Compiled General Laws of Florida, 1927, as follows:

8294. "The sheriff or any constable of the county shall be the executive officer of the courts of justices of the peace, but if the sheriff or constable shall for any reason be disqualified or unable to act, justices of the peace may appoint any individual, not interested in the case on trial, to serve process and to perform all duties of such executive officers."

8296. "The Sheriff of the county or any constable shall be the executive officer of the county Judge's Court, but if the sheriff or constable shall for any reason be disqualified or unable to act, the county judge may appoint any individual, not interested in the case on trial, to serve process and perform all duties of such executive officer."

4573. "He shall in person or by deputy, attend every term of the circuit court, county court, criminal court and county judge's court in his county."

From the above it appears that either the Sheriff or a Constable may be an executive officer of either the County Judge's Court or the Justice of the Peace Court. However, there is no provision for both of such officers to act as executive officer of either of said Courts at the same time, neither do I think that the statutes contemplate any conflict between the Sheriff and the Constable as to which shall be the executive officer at any particular time in such Courts.

The County Judge is elected from the County at large and the County Judge's Court is a court of county-wide jurisdiction, while the Constable is elected from a particular Justice of the Peace District of the County and the Justice of the Peace Court's jurisdiction relates to such district.

In such situation, it is my opinion that the Sheriff or his Deputy, when available, should act as executive officer of the County Judge's Court. It is also my opinion that when a Constable of a Justice of the Peace Court is available, he should act as the executive officer of such Court.

February 15, 1938.

**FEES CONVEYING PERSONS TO FLORIDA FARM COLONY
AND FLORIDA STATE HOSPITAL**

Dear Sir:

I am in receipt of your letter of the 2nd instant, the body of which reads as follows:

SHERIFFS

"Will you please advise what fees a Sheriff may charge for conveying persons to the Florida Farm Colony and to the Florida State Hospital, and whether these fees are payable by the County or by the State?"

Section 3658, Compiled General Laws of Florida, 1936 Supplement, provides for compensation for services in connection with an examination and hearing in insanity cases. Among other things, it provides that the Sheriff "shall receive such compensation as deemed reasonable by the county commissioners, but not to exceed that allowed for service of summons ad res."

The above section appears to relate only to the insanity hearing and not to services in connection with transporting persons to the Florida Farm colony.

Section 3666, Compiled General Laws of Florida, 1927, among other things, provides that no female over ten years of age shall be conveyed to the Colony except by a female official or in the company of a female escort.

Under said statute the cost of a female escort, when necessary, would naturally be a part of the cost of transporting a person to the Florida Farm Colony.

Section 3677, Compiled General Laws of Florida, 1927, with reference to commitments to the Florida Farm Colony, provides among other things for the County Judge to commit such person to the Florida Farm Colony for Epileptic and Feeble-minded "In the same manner as persons are committed to the Florida State Hospital."

Section 3649, Compiled General Laws of Florida, 1927, with reference to commitments of destitute lunatics to the Florida State Hospital, reads as follows:

"Orders as to destitute lunatics.—If it shall appear that said lunatic or insane person is destitute, then the judge shall deliver such lunatic or insane person to the sheriff for safekeeping, who shall notify the superintendent of the hospital for the insane of the State of Florida, and said superintendent shall send a nurse or some suitable attendant for such lunatic or insane person, who shall notify the sheriff upon arrival, indicating the train of intended departure on return trip, and it shall be the duty of the sheriff to deliver the patient to such nurse or attendant at the train, and it shall be the duty of such nurse or attendant to transport such lunatic or insane person to said hospital for the insane of the State of Florida, and deliver him or her to the proper officers having charge of same for the purpose of his or her care, custody and treatment: Provided, that the actual expenses of said nurse or at-

SHERIFFS

tendant, together with the expense of transportation of such patient, shall be paid from the money appropriated for the maintenance of said hospital for the insane of the State of Florida: Provided, also, that the necessary expenses of the sheriff in so delivering the patient to the nurse or attendant shall be paid to him together with his other costs including such delivery as provided in section 3658: Provided, however, that the judge may in his discretion deliver the said lunatic or insane person to any other person for his care, custody or maintenance, in which event said lunatic or insane person shall be so delivered and it shall be the duty of the person to whom such delivery is made to provide for his care, custody and maintenance. (Ch. 3036, Acts 1887, Sec. 1; Ch. 5706, Acts 1907, Sec. 1; Ch. 10179, Acts 1925, Sec. 1.)"

The crowded condition at the Florida State Hospital, as well as the Florida Farm Colony, makes it necessary for the Board of Commissioners of State Institutions to conserve all funds for maintenance purposes at such institutions, and to limit commitments thereto to approval of said Board, and to require that persons transmitted to such institutions shall be without cost to the State.

In such situation, the burden of transporting persons to said institutions, unless borne by the relatives or friends of the person, will fall upon the counties from which such persons are committed. The county may arrange with the sheriff or some other person to transport such persons upon a reasonable and necessary cost basis.

Your attention is called to the fourth paragraph of Section 2153, Compiled General Laws of Florida, 1927, which requires the county commissioners to have care and provide for the poor and indigent people of the county. Should arrangements be made with the sheriff to transport such persons, his necessary costs would appear to properly include five cents per mile each way for himself, should he travel by automobile, which is the mileage allowed State officials and employees. Included also would be the cost of a guard or female escort when necessary, together with meals for himself and the person transported, as well as for any guard or female escort. In some instances, there might possibly be other small necessary items of expense.

April 14, 1938.

FEES FOR EXECUTING SEARCH WARRANT

Dear Sir:

I am in receipt of your letter of the 12th ultimo, in which you ask to be advised as to what fees a Sheriff may charge for executing a search warrant.

SHERIFFS

In reply I beg to say that the statutes do not fix any separate and distinct fee for serving a search warrant. It is, therefore, my opinion that the fee for executing a search warrant is the same as the fee for executing any other criminal warrant, except in cases where no arrest is made in which instance the fee for executing the search warrant would be \$1.00 instead of the fee of \$2.00 allowed for arrest under Section 4583, Compiled General Laws of Florida, 1927. In this connection, your attention should also be called to the provisions of Section 7642, Compiled General Laws of Florida, 1927, which provides that no fees shall be paid to any Sheriff, Deputy Sheriff, Constable, or Police Officer for executing search warrants relating to intoxicating liquors or beverages, unless the search should reveal the fact that the person named therein is guilty of the offense charged.

July 18, 1938.

FEES FOR FEEDING PRISONERS—SECTIONS 2838 AND 2839, C.G.L. 1927

Dear Sir:

I am in receipt of your letter of the 30th ult., the body of which reads as follows:

"Will you please advise whether the rates fixed for feeding prisoners by Section 2838, Compiled General Laws, 1927, should be applied separately to prisoners held for another county under Section 2839, or whether the rates would apply to the total number of prisoners held by a sheriff for his own county and for other counties?"

I quote you Sections 2838 and 2839, Compiled General Laws of Florida, 1927, as follows:

2838. "The sheriff shall make out and present to the board of county commissioners, at any regular meeting thereof, his bill for fees for feeding prisoners and the period for which the charge is made, which fees shall be as follows: For feeding twenty prisoners, or less, sixty-five cents per day each; and for feeding all over twenty prisoners fifty cents per day each; and it shall be the duty of said board to properly audit the same, and order a warrant drawn against the fine and forfeiture fund of the county for the sum found to be due."

2839. "Where the prisoner is confined in the jail of a different county from the one in which the crime was committed, then the sheriff's bill for feeding such prisoner shall be presented to the board of county commissioners of the county in which the crime is alleged to have been committed, and paid

SHERIFFS

by such county. If the sheriff should subsequently collect any such fees for feeding a prisoner, it shall be his duty to pay the same to the county depository, to go into the fine and forfeiture fund. The county commissioners shall see that there is always set aside and retained in the fine and forfeiture fund out of the monies collected from the special tax authorized to be collected for such fund, enough cash to pay for keeping and feeding such prisoners."

Reading Sections 2838 and 2839 together, it appears that it is the purpose of the Legislature that the Sheriff file his bill with his County for feeding prisoners of such County and including prisoners from other Counties, and then file with the other Counties a bill for such prisoners since the statute specifically says that any collections from other Counties must be paid into his County Depository to go into the fine and forfeiture fund. Under this apparent procedure indicated by the statutes, the fee for feeding such prisoners should, of course, be based on the total list of prisoners, including those from other Counties.

October 13, 1937.

FEES—SECTION 4588, C.G.L. 1927

Dear Sir:

I am in receipt of your letter of the 2nd instant, the body of which reads as follows:

"Section 4588, Compiled General Laws, 1927, fixing the fees of Sheriffs reads in part as follows:

Subpoena for witnesses, service on each witness.....	25c
Return on same	10c

"Will you please advise whether the fee of 10c for the return is for the return on the subpoena or whether it applies to each witness named on the subpoena, and if the latter is true would it also apply to witnesses not served."

Your attention is called to Section 8308, Compiled General Laws of Florida, 1927, reading as follows:

"Whenever possible, the names of all witnesses summoned for, or at the cost of the State in a criminal case shall be included in one subpoena, and the prosecuting officer shall, whenever possible, include the names of all such witnesses in one praecipe for such subpoena."

Since the above quoted statute provides whenever possible the names of all witnesses summoned for or at the cost of the State in a criminal case shall be included in one subpoena, it appears that only one return

SHERIFFS

on such subpoena would be necessary and that only one fee for such return would be proper. If, however, it should become necessary to issue more than one subpoena the Sheriff would appear to be entitled to the fee for return on such additional subpoenas.

January 7, 1938.

**NOT ELIGIBLE FOR RETIREMENT ON HALF PAY UNDER
CHAPTER 17274, ACTS 1935**

Dear Sir:

I am in receipt of your letter of the 4th instant making inquiry if the party who has been a Deputy Sheriff or Sheriff for more than the requisite time fixed by Chapter 17,274, Laws of Florida, Acts of 1935, and has attained the age of 70 years, is eligible for retirement on half pay under the provisions of said Act.

The title to said Act reads as follows: "An Act to Permit the Retirement of State Officials and State Employees Under Certain Conditions with Pay." You will also note in the body of the Act reference is only made to State Officials or State Employees. In such situation, the same cannot apply to County officials or employees.

March 25, 1937.

SEARCHES AND SEIZURES

Dear Sir:

I am in receipt of your letter of the 24th instant with reference to searches and seizures and particularly in connection with gambling and gambling devices.

In reply I refer you to the decision of our Supreme Court in the case of Solomon vs. State, 115 Fla. 310, 156 So. 401, and quote you head-notes 2 and 3 as follows:

"2. Where officers saw no gambling when they forcibly entered room without search warrant, seizure of implements held in violation of search and seizure clauses, and admission of implements in evidence was error."

"3. Evidence that raiding officers found telephones, horse race charts, scratch sheets, betting sheets, and tickets held insufficient to sustain conviction for maintaining and operating gambling room and maintaining gaming implements, where officers saw no gambling when they entered room."

SHERIFFS

I also refer you to decision of our Supreme Court in the case of *Thurman vs. State*, 116 Fla. 426, 156 So. 484, and quote you headnotes 1 and 3 of said case as follows:

"1. Search of dwelling house, store, or other structure without warrant is prohibited by state Constitution."

"3. Statute authorizing certain officers, having 'good reason to believe that gambling is being carried on in any house or other place,' to enter it forcibly, if necessary, and without written warrant, *held* unconstitutional."

There are numerous statutes with reference to search and seizure and I would suggest when you have a prospective case involving the same it would be well to discuss such particular case with your State Attorney or County Prosecuting Attorney who will handle the cases in the Courts.

SECTION 9

SUPERINTENDENT OF PUBLIC INSTRUCTION

December 7, 1937.

COMPENSATION UNDER SECTION 553, C.G.L.

Dear Sir:

You request my opinion as to whether or not Chapter 10250, Acts of 1925, which is incorporated in the Compiled General Laws of Florida, 1927, as Section 553, limits the total amount that the County Superintendent of Public Instruction of Bradford County may receive from the Board of Public Instruction. Section 553 reads as follows:

"The superintendent of public instruction in all counties of this State having a population of not more than seventy-five hundred and not less than seven thousand, according to the State census of 1925, shall be paid from the county school funds for their services, yearly compensations of *not less than twenty-four hundred dollars per year*, payable in monthly installments: *Provided*, that no additional compensation as *traveling expenses*, or otherwise, shall be paid to such superintendents of public instruction. (Ch. 10250, Acts 1925, *1). (Italics ours).

From the words hereinabove italicized it appears that the amount of twenty-four hundred dollars a year is a minimum rather than maximum figure. There is nothing in said section to prevent the Board of Public Instruction from reimbursing the Superintendent for expenses actually incurred in the performance of his duties, particularly if these expenses were budgeted by the Board, with the exception of "traveling expenses." The Legislature evidently saw fit to classify traveling expenses as "additional compensation."

This opinion of course is predicated upon the assumption that Section 553 is a valid legislative enactment.

SECTION 10
SUPERVISOR OF REGISTRATION

April 21, 1938.

APPLICATION OF SECTION 2865, C.G.L. OF 1927

Dear Sir:

I am in receipt of your letter of the 13th instant, the body of which reads as follows:

"Will you please advise whether or not Supervisors of Registration are county officials within the meaning of Chapter 11954, Acts of 1927 (Section 2865 et seq., Compiled General Laws, 1927)?"

Section 2865, Compiled General Laws of Florida, 1927, reads as follows:

"Each county official whose compensation for his official duties is paid wholly or partly by fees or commissions, or fees and commissions, shall receive as his yearly compensation for his official services from the whole or a part of the fees, or commissions so collected, the following sum only: All the net income from such office not to exceed five thousand dollars; sixty per cent. of the next three thousand dollars, or any fraction thereof; forty per cent. of the next two thousand dollars or any fraction thereof; and twenty-five per cent. of the rest and residue thereof: Provided, that no such official shall under the foregoing computation of remuneration receive from the income so collected by him more than seven thousand five hundred dollars per year."

In reply to your inquiry I beg to say it is my impression that most of the Supervisors of Registration in the State of Florida are paid a flat salary and do not receive fees as part of their compensation. However, if under local laws certain Supervisors in addition to receiving a stated salary could also receive certain fees in connection therewith, it is my opinion that said Section 2865 would limit their total compensation unless the local law should provide otherwise.

SECTION 11

TAX ASSESSORS

October 27, 1937.

COMMISSIONS—SALARY—CHAPTER 16,952 OF 1935

Dear Sir:

I am in receipt of your letter of the 25th instant, the body of which reads as follows:

"Please advise whether, under Chapter 16952, Acts of 1935, the Assessor of Taxes, after having received all or part of the commission supplements required to bring his net receipts for the calendar year up to the minimum of \$3,600.00, may from subsequent commission collections earned on that year's Tax Roll, properly pay to himself a sum sufficient to bring his net receipts up to the allowable maximum of \$4,800.00."

Chapter 16,952 in paragraph (a) of Section 1 provides for certain commissions excluding errors to the Tax Assessor for assessment of taxes. The same paragraph and Section provides that the net compensation of the Tax Assessor, after deducting for all legal expenses of the office, shall not be more than \$4800.00 nor less than \$3600.00 per annum.

Section 2 of said Act provides for the County Commissioners of the County to supplement the salary of the Tax Assessors for any year to insure the minimum of \$3600.00 per annum to such Tax Assessor if the commissions allowed and received during any year fail to yield such sum.

When a Tax Assessor, subsequent to such year, receives further commissions on that particular year's tax roll, it is my opinion that he may retain an amount sufficient to bring his net income on such roll up to \$4800.00 per year. Chapter 16952, Laws of Florida, Acts of 1935, is not a very lucid act, but from a history of the act and the wording of the same, I believe the intent to be that at the end of each year's work the Tax Assessor is guaranteed a net salary of \$3600.00 per year, subject to be increased to the sum of \$4800.00 per year if the subsequent commissions net that much. If it was the intent of the Legislature under Section 2 to require the Tax Assessor, out of his subsequent commissions, to reimburse the County for the amount which had been paid him, the act should have so provided.

September 3, 1938.

COMPENSATION—POLK COUNTY

Dear Sir:

I am in receipt of your letter of recent date enclosing copy of communication from one of your Assistants relative to compensation of the

TAX ASSESSORS

Tax Assessor of Polk County for the year 1936 and referring to the Polk County case of State ex rel. White vs. Foley, et al., 132 Fla. 595, 182 So. 195, and the Duval County case of State ex rel. Baker, et al., vs. Gray, et al., 133 Fla. 23, 182 So. 620. The copy of letter enclosed states the Tax Assessor of Polk County has approximately \$2100.00 on hand which he earned in 1936 but collected or received in 1937, and wants to know if he can use this to increase his compensation for the year 1936. He further states that the facts seem to be: That all of the income received in 1936 was turned over to the County and so reported; that he received from the County a salary of \$4800.00 under a special law; that the Assessor states that there was a balance of \$600.00 due his clerks for 1936 for which there were not sufficient receipts to pay; that the Assessor challenged the constitutionality of the special salary law of the Legislature and the Supreme Court declared the same unconstitutional and issued a clarifying opinion in which the Assessor was authorized to pay the \$600.00 due his clerks out of funds on hand which were earned in 1936 and received in 1937; that the Assessor paid the \$600.00 and still has on hand the sum of \$2100.00 mentioned above; that the Assessor and his Attorney claimed in view of the Supreme Court decisions, referred to in the Polk County case and the decision referred to in the Duval County case, he has legal authority to recalculate his compensation for the year 1936 and use the \$2100.00 on hand in making settlement; that they claim in the light of the Supreme Court decisions the \$2100.00 received in 1937 will not have to be accounted for as 1937 income.

In the Duval County case, State ex rel. Baker, et al. vs. Gray, et al., the 4th headnote read as follows:

"That county fee officers had compensated themselves and accounted for a given year under statute subsequently found to be invalid did not estop officers, who collected during following year fees earned during year accounted for, from applying amount so collected to payment of balance due on compensation to which they were lawfully entitled for year accounted for, where money involved had not been paid into county, but had been retained by officers. Acts 1931, c. 14666; Acts 1935, c. 16929; Acts 1929, Ex. Sess. c. 14502; Comp. Gen. Laws 1927, Secs. 2867, 2868."

In the Polk County case, State ex rel. White vs. Foley, et al., the 8th headnote reads as follows:

"A county tax assessor acquiescing in operation of unconstitutional law fixing his compensation by making reports required by the law and by submitting his salary to the budget commission at the amount fixed by the law and by paying a

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filing fee based on the salary allowed him by the law, and by accepting compensation under the law since its enactment, waived pro tanto his rights under general law regulating his salary for the years prior to institution of mandamus proceeding to have his compensation fixed under the general law, but did not waive his rights to have his future compensation fixed under the general law. Acts 1935, c. 18925; Comp. Gen. Laws 1927, Sec. 2865, et seq."

The clarifying opinion of the Court on rehearing reads as follows:

"On consideration of petition for rehearing, it is found that there is some confusion in the minds of counsel as to the proper interpretation of our opinion filed herein May 26, 1938.

"It is clear to us that a proper construction of that opinion leads to the conclusion that petitioner is entitled to be reimbursed in an amount equal to the amount (\$600) expended and budgeted for office expense in the year 1936 and to be paid his salary for 1937 under the provisions of the general statutes. Such is our construction.

"So the petition for rehearing is denied and peremptory writ shall issue."

Since the Supreme Court has specifically spoken with reference to Polk County, the decision and clarifying opinion in said case would seem to be controlling. As I construe the language of the Court in said case, it is definitely determined that the Tax Assessor of Polk County is only entitled to the compensation provided in the Special Act in the sum of \$4800.00 per annum, and that the said sum of \$2100.00 mentioned may not be used to supplement said compensation for the year 1936. According to the decision he will be entitled to compensation for the year 1937 under the provisions of the general statutes.

October 27, 1937.

**COMMISSIONS—DEDUCTION FOR ERRORS—CHAPTER 15,045 OF
1931—CHAPTER 16,952 OF 1935—SECTIONS 1030 AND
1031, C.G.L. OF FLA. 1927**

Dear Sir:

I am in receipt of your letter of the 25th instant, the body of which reads as follows:

"Will you please advise whether or not the customary retainage should be withheld pending the filing of the error and insolvency lists, and whether or not deductions should be made on account of errors from the commissions payable to the As-

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essor of Taxes under Chapter 15045, Acts of 1931, and under Chapter 16952, Acts of 1935."

Chapter 15,045 of 1931 provides for commissions for assessing special taxes by the Tax Assessor *subject to the same limitations and deductions as commissions are allowed and paid for general county tax*. These limitations and deductions are under Section 1028, Compiled General Laws of Florida, which provides that errors must be excluded, and under Section 1031 one-fifth of the commissions must be retained until the report of errors and double assessments is approved by the County Commissioners.

Chapter 16,952 in paragraph (a) of Section 1 provides that the County Assessor of Taxes shall be entitled to receive certain commissions upon the amount of taxes, general or special, assessed *excluding errors*. Chapter 16,952 changes and fixes the commissions to be received by the Tax Assessor but does not appear to affect Sections 1030 and 1031, Compiled General Laws of Florida, 1927, providing for retainers pending the filing of error and insolvency lists.

September 24, 1937.

COMPENSATION UNDER CHAPTER 17876 AND 17877, ACTS 1937

Dear Sir:

I am in receipt of your letter of August 30th, the body of which reads as follows:

"Section 2 of Chapter 17877, Acts of 1937, provides a minimum annual income of \$2,400.00 for tax assessors and tax collectors in counties having a population between 4,000 and 4,015 according to the 1930 census.

"Will you please advise if this section of that Act was repealed by Chapter 17876, Acts of 1937, which repealed population acts according to an opinion rendered this office by you July 24, 1937. (That opinion was recalled. See letter dated No. 16, 1937, page of this Report.)

"In the event that the foregoing is not repealed, is the amount of commissions received by the collector the only item of income to be considered in determining the payment to be made by the county commissioners? That is, are the fees for automobile tags, writing tax certificates, etc., not to be considered?"

Chapter 17,877, Acts of 1937, is an act fixing the compensation of the County Assessor of Taxes and Tax Collector in counties having a total population of not less than 4,000 and not more than 4,015 accord-

TAX ASSESSORS

ing to the Federal Census of 1930, and prescribing to the Federal Census of 1930, and prescribing the basis of commissions on assessments and collections.

Section 1 of said Act prescribes the commissions of the Tax Assessor and Tax Collector in such counties for taxes assessed and collected. Section 2 of said Act reads as follows:

"In the event the commissions allowed and received by the County Assessor of Taxes or by the County Tax Collector in any year, under the provisions of Section 1 hereof, *or otherwise*, shall not amount in the aggregate to the sum of \$2,400.00 net, the County Commissioners shall allow and pay to the County Assessor of Taxes or to the County Tax Collector, from the General Revenue Fund of the county, the difference between the aggregate net amount so received and \$2,400.00, to the end that the County Assessor of Taxes and the County Tax Collector shall each receive not less than \$2,400.00 net per annum."

You will note in my letter to you under date of July 24, 1937, to which you refer, the opinion therein rendered did not state that Chapter 17,876 of 1937, repealed population Acts. I quote the exact language therein used in such connection as follows:

"* * * Since Chapter 17876 was one of the last acts to be passed, having become effective on June 14, 1937, and since by the terms of said Act all conflicting laws are repealed and since said Act applies generally to all such county officials of the State, it is my opinion that the same should control and apply to both general and special district commissions of such officers in all counties of the State."

From the foregoing you will note that my opinion was that the same should control and apply to both special and general district commissions of such officers in all counties of the State. In line therewith, it is my opinion that said Chapter 17,876, controls over Section 1 of Chapter 17,877, Acts of 1937, with reference to commissions to Tax Assessors and Tax Collectors on taxes assessed and collected, but I do not think that Chapter 17,876, has the effect of repealing Section 2 of Chapter 17,877, as above quoted.

Answering the last paragraph of your letter I beg to say in my opinion the commissions received by the Tax Collector on taxes collected under the provisions of said Chapter 17,876, is not the only item of income to be considered in determining the total compensation of the Tax Collector but other legitimate fees coming to the office from sources other than from taxes assessed and collected should also be considered in such determination.

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October 19, 1937.

COMMISSIONS UNDER CHAPTER 17,876 OF 1937—
CHAPTER 16,938 OF 1935*Dear Sir:*

I am in receipt of your letter of the 18th instant making inquiry if Chapter 17,876, Laws of Florida, Acts of 1937, repeals Chapter 16,938, Laws of Florida, Acts of 1935.

Chapter 16,938, Laws of Florida, Acts of 1935, is an act to provide for the payment of commissions to Tax Assessors for the assessment of all bond and bond interest millage in counties of the State of Florida having a population of not less than 12,080 and not more than 12,180, according to the last Federal Census. The Act applies only to Bay County with a population of 12,091 and to Washington County with a population of 12,180.

Chapter 17,876, Laws of Florida, Acts of 1937, is an Act designating and fixing the compensation for Tax Assessors and Tax Collectors of the several counties of the State of Florida, designating who shall pay such compensation and the fund from which payment shall be made, and providing the basis of commissions on the assessments and collections made, and repealing all Acts to the contrary. Section 4 of said Act repeals all laws and parts of laws in conflict with the provisions of said Act. Section 1 of said Act fixes the commissions of the Tax Assessor, as well as the Tax Collector, on State, County, Special School District and all other tax district taxes, general or special, that are provided by law to be assessed by the Tax Assessors of the several counties of the State, and is a general law applying to all counties.

In my opinion said Chapter 17,876 of 1937, supersedes and by inference repeals Chapter 16,938, Acts of 1935.

November 16, 1937.

COMMISSIONS UNDER CHAPTER 17876, ACTS OF 1937

Dear Sir:

On the 24th day of July, 1937, at your request, I rendered you an opinion relative to the above subject matter. Subsequent to that opinion, I have given a great deal of study to Chapter 17876, Acts of 1937, and have decided to recall the opinion of July 24 and substitute therefor the opinion which I am today writing.

Chapter 17876, as originally drawn, applied only to tax assessors. Several amendments were added to the Bill and one complete section was stricken, which had the effect of rendering the Act in question very

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complicated and with several controversial features. In rendering this opinion I am not taking into consideration the constitutional questions involved nor previous decisions of the Florida Supreme Court interpreting an earlier act. I realize fully the extra burdens the present interpretations may place on the State Auditing Department as well as the Comptroller's Office but it is my duty to interpret an act so as to arrive as near as possible to the legislative intent.

I am answering serially the questions propounded in your letter of July 2, 1937, which was answered by my opinion of July 24, 1937.

1. "The second paragraph of Section 1 gives the rates of commissions to be paid. Are these rates to be paid by each taxing unit? If, not, how are the first \$5,000 and the next \$5,000 to be determined. That is, which taxing unit is to pay the ten per cent. and five per cent. rate, or are these to be pro-rated?"

Under the law heretofore, the larger rates of commissions, for assessing and collecting taxes in the county, applied only to the county taxes and the rates for special or local taxes were nominal. While Senate Bill 333 is not clear, I do not think the Legislature could have had in mind the imposition of the higher rates of commissions on special or local taxes collected in the county, if the county funds assessed or collected should be sufficient for the purposes of the higher rates named. If, however, the funds assessed and collected for the county should not be sufficient for the higher rates of commissions provided, I think the higher rates of commissions may be apportioned between the county and the special or local collections. Of course, the two per cent. commissions allowed apply to all county or special or local taxes in the county after deducting the first and second \$5,000.

2. "Does the last sentence of Section 1 mean that income is to be reported as applicable to the year received and not to the year earned? If so, how will the change be made from the basis of applying income to the year earned to that of applying it to the year, received?"

The wording of the Act shows that the intent is to change the basis of applying income from the year in which earned to the year in which received. From a discussion of this question with members of the Legislative Committee of the Tax Assessors and from the legislators, I know that this was the intent of the Act also. That confusion will result from this Act I realize is inevitable, but the policy of the law is within the purview of the Legislature and the constitutional interpretation lies with the Court. The change in applying this basis should be made from the first day of January, 1937.

3. "Are the redemption fees provided in Section 2 to be reported as income by the assessor in office at the time of the redemption?"

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Yes. This section should not create any confusion as this is a new commission allowed the assessors.

4. "Are the redemption fees to be paid on assessments for 1937 and subsequent years or on redemptions in 1937 and subsequent years?"

I think the Act in question applies to assessments for 1937 and subsequent years, including omitted taxes on these years.

5. "Does Section 3 apply to commissions of tax assessors from January 1, 1936 and to collections made by tax collectors on the 1936 general and intangible rolls, 1936 polls and 1936-37 licenses; and if not, when is it applicable?"

Section 3 of the Act provides that the law shall control and determine compensation to be received by the assessors and collectors for duties performed in assessing taxes to provide revenue for the county fiscal year ending September 30, 1937, and all subsequent years.

While the section does not state that it relates to duties performed in collecting taxes as well as assessing them, I think it is necessary to read the word "collecting" into the Act, as clearly this was the intent. It is the 1936 roll that provides the revenue for the fiscal year ending September 30, 1937. It is my opinion, therefore, that the increased rates should apply to the 1936 roll. The tax collectors start to collecting the occupational taxes on October 1 of 1936 and usually on November 1 collecting taxes on the 1936 roll to provide revenue for the fiscal year ending September 30, 1937. My answer to your Question 5, therefore, is that this section applies to commissions of assessors from January 1, 1936, and to collections made by tax collectors on the 1936 general and intangible rolls, 1936 polls, and 1936-37 licenses.

Section 1033, Compiled General Laws of 1927, provides the tax collector shall be entitled to commissions upon the aggregate amount of state taxes, general or special, *including licenses*, (Italics ours) collected by him and paid into the State Treasury. Chapter 17876 does not mention licenses but I do not construe that as being material, as I do not think the italics words added anything to the original section 1033, as licenses are taxes, so it is my opinion that Under Chapter 17876 the tax collectors will continue to be paid their commissions on the collection of occupational licenses, etc.

It is also my opinion that the assessors should continue to be paid their commissions on the same basis on the intangible tax rolls; in other words, that that is still a separate and distinct roll and the Legislature had this in mind in the passage of the Act in question.

6. "Does this Act repeal all special acts previously passed as to commissions of assessors and tax collectors, and does it have

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any effect on such acts passed at the 1937 Session of the Legislature, either before or after the passage of this Act?"

Senate Bill 333 purports to be a general revision of the whole subject relative to tax assessors' and tax collectors' commissions. This premise being true, it is my opinion that it controls any general or special act or any general act with local application passed prior to the 1937 Session of the Legislature.

In the case of *Sparkman vs. State*, 71 So. 34, 71 Fla. 210, the Florida Supreme Court said:

"A general act will not be construed to repeal or modify a special one embraced within its general terms unless it is a general revision of the whole subject or the two acts as so repugnant as to indicate a legislative intent that one should repeal or modify the other."

See also *City of Jacksonville vs. Bowden*, 64 So. 769, 67 Fla. 171; *State vs. Southern Land and Timber Co.*, 33 So. 999, 45 Fla. 374.

It is a general rule that a general act will not be held to repeal or modify a special one unless, as above stated, the general act is a general revision of the whole subject matter or unless the two acts are so repugnant as to indicate a legislative intent that the later one should repeal the other.

It is also a rule of construction that where, at the same session of the legislature, two laws are passed, one dealing with a subject generally and the other dealing with a specific subject matter, that is embraced in the general classification, the act dealing with the specific question, subject or property should prevail. See *State vs. Wetz*, 169 N. W. 835. It has also been held that two acts that are passed at the same session of the Legislature are not to be construed as inconsistent, if it is possible to construe them otherwise, but where it is impossible to give effect to both acts, the later in point of time will prevail. *People vs. I. C. Rr.*, 129 N. E. 66.

The United States District Judge, in the case of *Harris vs. City of Hialeah*, 10 Fed. Supp. 546, said that local or special law supersedes general law in Florida where there is an inconsistency or an evident intent in local law to make the general law inapplicable.

The presumption against implied repeals is especially strong where provisions or acts supposed to conflict were passed at nearly the same time. Effect should be given, if possible, to statutes in *pari materia* enacted at the same legislative session; where two acts relating to the same subject were under consideration and enacted at the same session of the legislature, they should, if possible, be construed as one act on

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the same subject with the local act being an exception to the general act. See 25 R. C. L., *Statutes, Section 180*.

It is therefore my opinion that Chapter 17876 does not control all local laws or general laws of local application relative to tax assessors' and tax collectors' commissions passed at the 1937 Legislature.

November 24, 1937.

COMMISSIONS UNDER CHAPTER 13802 OF 1929—CHAPTERS 15048,
14717, 14777 OF 1931—CHAPTER 17876 OF 1937

Dear Sir:

I am in receipt of your letter of the 17th instant, the body of which reads as follows:

"Will you please advise whether or not Chapter 15048, Acts of 1931, prevails as to the commission payable to the assessor of taxes, or whether the rates fixed by such laws as Section 1471, Compiled General Laws of 1927, Chapters 14717, Acts of 1931, Chapter 14777, Acts of 1931, and Chapter 13802, Acts of 1929, apply for periods prior to the effective date of Chapter 17876, Acts of 1937."

Chapter 15048, Laws of Florida, Acts of 1931, is a general Act fixing the commissions of County Assessors of taxes for assessing special taxes and special tax district taxes in counties having a population of between 50,000 and 70,000, according to the last preceding State or Federal Census whichever may be the later. The other statutes mentioned by you are Acts prescribing the fees of the Tax Assessor with reference to specific taxes such as the Everglades Drainage District and the Okeechobee Flood Control District.

While Chapter 15048 of 1931 will probably prevail over prior statutes so far as the same relates to unsettled tax rolls at the time of the passage of said Act, I do not think that said Chapter would prevail over Acts of the same and subsequent Legislatures prescribing specific fees for the Tax Assessor for services in connection with such special tax districts.

November 26, 1937.

COMMISSIONS UNDER CHAPTER 17876 S. B. 333, AND CHAPTER
18296 (COM. SUB. FOR H. B. 396)

Dear Sir:

I acknowledge receipt of your letter of November 18, in which you state:

"I am requested by numerous Tax Assessors to secure from you an official opinion as to whether or not the Clerks of the

TAX ASSESSORS

Court are required to collect the two (2%) per cent commission allowed by Senate Bill 333 to Tax Assessors on the 1937 roll as a part of the cost before advertising the delinquent taxes for sale as provided by House Bill 396.

"Will you kindly advise me at your earliest convenience."

Chapter 17876, Laws of Florida, Acts of 1937 (Senate Bill 333) provides in Section 2:

"When any lot or parcel of land certified or sold to the State of Florida for non-payment of taxes for any previous years shall be redeemed or certificates purchased by payment to or through the Clerk of the Circuit Court of the respective counties of the State of Florida, as provided now or as may hereafter be provided by law, the Clerk of said Court shall, before making the final remittance of the balance on hand derived through such redemption or purchase, pay to the tax assessor of the county in which the land redeemed or purchased lies, two per cent of the amount of the principal of the taxes for the years 1937 and subsequent which are covered by said certificate or certificates or subsequent or omitted taxes redeemed or purchased, excepting any fees or commissions that may have been allowed and paid for the first year's taxes included in said certificate, the said amount to be deducted by the said Clerk from his remittance made to the various districts participating in the certificate. The amounts so paid, as above provided, shall be a part of the general income or compensation of the said tax assessor for the year in which received and shall not increase the maximum salary provided by law to any tax assessor."

The above section provides new compensation to the tax assessors of the State, as prior to the passage of this Act the Assessors did not collect commissions on the redemption of taxes where the taxes on the lands had not been extended.

This Act was passed at approximately the same time as the Committee Substitute for House Bill 396 and must be, as far as possible, construed together.

I have heretofore ruled that under Committee Substitute for House Bill 396, the tax collectors' commission was not a part of the costs to be collected under the said Act, as under said Act it was the certificate that was being sold for what the purchaser would give for it plus the Clerk's costs and cost of advertising.

It is my opinion that the two per cent commission allowed under Senate Bill 333, (Chapter 17876) is not required to be collected by the Clerk prior to the advertising delinquent taxes for sale as provided for by the Committee Substitute for House Bill 396.

SECTION 12
TAX COLLECTORS

October 19, 1938.

BONDS, SECTION 2417, C. G. L.

Dear Sir:

A acknowledge receipt of your letter of October 8, in which you state:

"I am attaching hereto a letter from Governor Cone, together with a copy of the minutes of a meeting of the Board of County Commissioners of Santa Rosa County, approving a reduction of \$5,000.00 in the bond of Honorable Earl Lewis, Tax Collector.

"The Bonding Company sent Mr. Lewis a rider to be attached to his bond authorizing the reduction, with the request that he present it to the Governor for his signature. Mr. Lewis sent the rider to this office and asked that I secure the Governor's signature. The rider has been transmitted to the Governor's office and the attached letter from him is in reference thereto.

"I will be glad to have your advice on this matter as the Governor feels as I do about reducing the amounts of these bonds. In view of the action of the Board of County Commissioners, however, I am wondering whether or not either of us has any choice in the matter, and will appreciate your advice on this question."

Section 2417, Compiled General Laws, provides as follows:

"The tax collector of each county shall give bond in a sum to be fixed by the Board of County Commissioners of the respective counties, subject to the approval of the Comptroller as to amount and surety. In fixing said bond the Board of County Commissioners shall take into consideration the amount of money likely to be in the custody of the collector at any one time."

It is my opinion that the primary duty rests on the Board of County Commissioners to fix the bond of the tax collector but this is subject to your approval as Comptroller. In the instant case the County Commissioners of Santa Rosa are seeking to reduce the bond of the tax collector from \$15,000 to \$10,000. If in your opinion, such a reduction is improper, I do not think the County Commissioners have the right to make this reduction without your approval under the section above quoted. I do not believe under the section above quoted that you should

TAX COLLECTORS

take an arbitrary position but if the facts do not justify a reduction in the amount specified then it is my opinion the court would uphold you in the rejection of the new bond in the amount specified.

October 5, 1938.

COMMISSION

Dear Sir:

I acknowledge receipt of your letter of recent date in which you enclose letters from the tax collector of Duval County. You request that I render you an opinion on two questions raised in this correspondence, the questions being as follows: First, are tax collectors entitled to be paid a commission on license taxes collected within their respective counties? Second, whether or not, where money is collected by a tax collector under a provision of Chapter 17759, Acts of 1937, and the said amount immediately paid back for the benefit of the fair association upon whose grounds such licensee intends to operate, the tax collector is entitled to be paid a commission on such collections?

On the 16th day of November, 1937, my predecessor, rendered an opinion to the State Auditor, in which the following paragraph appears:

"Section 1033, Compiled General Laws of 1927, provides the tax collector shall be entitled to commissions upon the aggregate amount of state taxes, general or special, *including licenses*, (italics ours) collected by him and paid into the State Treasury. Chapter 17876 does not mention licenses but I do not think the italic words added anything to the original section 1033, as licenses are taxes, so it is my opinion that under Chapter 17876 the tax collectors will continue to be paid their commissions on the collection of occupational licenses, etc."

I concur in the opinion previously rendered to the effect that the tax collectors are entitled to their commissions on licenses collected.

It is also my opinion that the tax collector is entitled to his commission on licenses collected from shows or amusements, etc., where under the specific provisions of the act such collections are required to be returned to the fair association. Chapter 17759 specifically appropriates this money for the "benefit of the fair association upon whose grounds and in conjunction with which such licensee hereunder operates or intends to so operate."

October 20, 1937.

COMMISSIONS—DRAINAGE DISTRICTS—CHAPTER 17,876
ACTS OF 1937

Dear Sir:

I am in receipt of your letter of the 19th instant, the body of which reads as follows:

TAX COLLECTORS

"The State Auditing Department does not ordinarily audit the accounts of drainage districts. It is required, however, to audit the commission accounts of Tax Collectors including commissions earned by Tax Collectors on drainage taxes.

"Section 1471, Compiled General Laws, 1927, fixes the commissions of Tax Collectors for collecting drainage taxes. Various other Acts fix Tax Collectors' commissions for collecting the taxes of specific drainage districts. All of these taxes are assessed on separate tax rolls or 'Drainage Tax Books.'

"Will you please advise whether or not Chapter 17876, Acts of 1937, fixes the rate of commissions payable to Tax Collectors for collecting drainage taxes which are not assessed by the County Tax Assessor."

Your attention is called to the first paragraph of Section 1 of said Chapter 17,876 of 1937, reading as follows:

"That the Tax Assessors of the several counties of the State of Florida shall be entitled to receive upon the amount of all taxes assessed, and the Tax Collectors of the several counties of the State of Florida shall be entitled to receive upon the taxes collected, each respectively, the following commission on and including County, Special School District, and all other Tax District taxes, general or special, *that are provided by law to be assessed by the Tax Assessors of the several counties of the State of Florida*, excluding errors, but not on each separately and provided by law to be collected by the Tax Collectors, to-wit: * * *

In reply I beg to say that the italic words in the above quotation indicate that Chapter 17,876 of 1937, is not intended to fix the rate of commissions payable to the Tax Collector for collecting drainage taxes not assessed by the Tax Assessor.

November 18, 1937.

COMMISSION—SECTION 10, CHAPTER 17759, ACTS OF 1937

Dear Sir:

I acknowledge receipt of your letter of November 4, in which you state:

"Section 10 of Chapter 17759, Acts of 1937 provides in part as follows:

"Provided, an amount equal to the amount collected as State and County license taxes is hereby appropriated for the benefit of the fair association upon whose grounds

TAX COLLECTORS

and in conjunction with which, such licensee hereunder operated or intends to so operate.

"In the event the Comptroller approves the above mentioned appropriation please give me your opinion as to whether or not the Tax Collector should deduct 2% of the State and County license tax collected or should he pay out an amount equal to the amount collected as State and County licenses without such deduction, also whether or not the County Judge's fee should be collected and if collected refunded back to the fair association."

Chapter 17759, Acts of 1937, provides, among other things, a license tax on travelling shows, etc. Section 10 provides that the shows shall pay the license taxes now or hereafter provided by law; provided, an amount equal to the amount collected as state and county license taxes is hereby appropriated for the benefit of the fair association upon whose grounds or in conjunction with which the licensee hereunder operated or intends to so operate. Upon proper application to the tax collector by such fair association, when license is applied for or within two days thereafter, on a form prescribed by the Comptroller, the Comptroller, upon approving any appropriation shall within ten days after receiving application from said tax collector instruct the said tax collector to distribute the amount paid for such license direct to said fair association. The Comptroller shall prescribe the proper forms, rules and regulations for carrying out the purpose and intent as expressed herein and for properly crediting the tax collector for such disbursement.

It will be observed that the tax collector is required to pay to the fair association an amount equal to the amount collected as state and county license taxes and the law does not authorize him to deduct 2% of the state and county license tax collected.

The tax collector's commission should be paid to him as though the amount collected was turned over to the State.

I think the county judge's fee should be collected but that this should not be refunded to the fair association as it is not a part of the state and county license collected.

August 18, 1937.

COMMISSIONS EARNED WHEN REMITTED FOR

Dear Sir:

I am in receipt of your letter of the 17th instant which reads as follows:

"It has been the consistent practice of this Department to consider that commissions were not earned by a tax collector

TAX COLLECTORS

until the collections were remitted. For instance, amounts collected in December but remitted in the following January have been treated as earned in January. This practice is based on the provisions of Section 7461, Compiled General Laws, 1927."

"Will you please advise whether or not our treatment has been correct."

Section 7461, Compiled General Laws of Florida, 1927, referred to by you provides in part as follows:

"It shall be unlawful for any State or county officer or any board of county officers, required to audit the accounts of officers under the laws of this State, to approve or pay any commissions on funds collected and not paid over as required by section 471 * * *"

Section 471, referred to in said Section 7461, reads as follows:

"It shall be the duty of every State and county officer within this State, authorized to collect funds due the State or county, to pay all sums officially received by him into the State or county treasury promptly, within thirty days after the first day of the month next succeeding the day receiving the same.

"No officer shall hereafter be entitled to receive any commission or compensation for collecting said funds, where he fails or refuses to pay the same over for thirty days after the expiration of the time for payment as provided in this section."

Your attention is also called to Section 1033, Compiled General Laws of Florida, 1927, which provides that the Tax Collector shall be entitled to commissions upon the aggregate amount of State taxes, general or special, including licenses collected by him *and paid into the State Treasury*. The Section, after reciting rates for commissions on State taxes, provides that the Tax Collector shall be allowed the same rate of commissions for collecting the County tax.

Considering the above mentioned Sections together and particularly the language of Section 1033, providing for commissions on State taxes paid into the State Treasury, I think it may be assumed it was the intention of the Legislature for the Tax Collector to be entitled to commissions on County taxes also when paid into the County Treasury. The practice of your Department to consider that commissions are not earned by a Tax Collector until collections are remitted seems to be reasonable. In this connection, your attention is also called to Section 233, Compiled General Laws of Florida, 1927, which provides that the State Auditor may make and enforce rules and regulations necessary to facilitate proper audits as to all offices and departments.

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May 12, 1937.

COMMISSIONS—RAILROAD TAXES COLLECTED BY COMPTROLLER

Dear Sir:

I am in receipt of your letter of the 4th instant referring to communication from this office under date of June 5, 1934, appearing on page 233 of Biennial Report for the years 1933 and 1934, and also referring to communication from this office, under date of December 5, 1935, appearing on page 247 of Biennial Report for 1935-1936, both of which letters relate to fees of the Tax Collector on railroad taxes collected by the Comptroller. You call attention to an apparent conflict between said communications.

In reply to your inquiry I beg to say that the letter of June 5, 1934, is the proper interpretation of the statutes with reference to commissions of Tax Collectors in connection with railroad taxes. The substance of said opinion is that the Tax Collector is not entitled to commissions on railroad taxes collected by the Comptroller unless such taxes are paid to the Comptroller merely for convenience prior to delinquency. You will, therefore, disregard letter of December 5, 1935, appearing on page 247 of the last Biennial Report.

March 28, 1938.

HEALTH TAX FUND SHOULD BE REMITTED TO BOARD OF
COUNTY COMMISSIONERS*Dear Sir:*

I acknowledge receipt of your letter of recent date in which you state:

"I am in receipt of a letter from Honorable Ralph B. Johnson, Tax Collector of Manatee County in which he states that a levy was made by the Board of County Commissioners under the provisions of Chapter 14906, Acts of 1931 for the establishment of a County Health Union and by resolution of the Board of County Commissioners he was instructed beginning October 1st, 1937 to turn over collections from the above mentioned fund to the General Revenue Fund of the County instead of remitting same to the State Treasury of the State of Florida in accordance with provisions of Chapter 14906, Acts of 1931. He stated in his letter that during the months of November and December that his total collections for the Public Health Fund was \$1,907.72 and that this amount has been remitted to the Board of County Commissioners instead of the State Treasury.

"Please give me your opinion as to whether or not the County Tax Collector should continue to remit to the Board of County

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Commissioners collections from the Public Health Fund or should he remit same to the State Treasury as provided by Chapter 14906, Acts of 1931."

In checking over the budget and the tax levy of Manatee County, I find that where this levy for health was made that it did not specify that it was under the provisions of Chapter 14906, Acts of 1931. You could not tell from the levy what it was to be used for except for health purposes.

I am informed by the State Board of Health that while Manatee County originally agreed to operate a health unit under Chapter 14906, Acts of 1931, that no obligation was incurred under this agreement by the State Board of Health.

It is therefore my opinion that under the facts set up in your letter and the records that I have seen in your office that the Tax Collector should remit the funds collected to the Board of County Commissioners.

It is also my opinion that the balance which you now have to the credit of Manatee County State Board of Health Fund should be remitted to the Board of County Commissioners.

May 25, 1937.

INSPECTION OF PUBLIC RECORD AUTHORIZED

Dear Sir:

I am in receipt of your letter of the 24th instant, the body of which reads as follows:

"In a number of counties in this State certain individuals, especially tax agents, are requesting the tax collectors' permission to copy names from the tax rolls of those who are paying their taxes and are using such information for their personal benefit, chiefly for the purpose of soliciting the taxpayers with the idea in mind of a composition of settlement in the payment of their taxes.

"I would be glad to have you advise me if the tax collectors would be justified in preventing this from being done."

In reply your attention is called to Section 490, Compiled General Laws of Florida, 1927, reading as follows:

"All State, county and municipal records shall at all times be open for a personal inspection of any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen."

TAX COLLECTORS

Your attention is further called to Section 425, Revised General Statutes of Florida, 1920 (being Section 491 of the Compiled General Laws of Florida, 1927), as amended by Chapter 17,173, Laws of Florida, Acts of 1935, reading as follows:

"Any official who shall violate the provisions of Section 424 (Revised General Statutes of Florida, 1920), shall be subject to removal or impeachment and in addition shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding One Hundred (\$100.00) Dollars, or imprisonment in the County Jail not exceeding three months, either or both, in the discretion of the Court."

Your attention is further called to the decision of our Supreme Court in the case of *State ex rel. Davidson vs. Couch*, 115 Fla. 115, 155 So. 153, wherein the Court holds that the provision that State, county and municipal records shall be open for public inspection to citizens is mandatory. Your attention is further called to the decision of our Supreme Court in the case of *State ex rel. Cummer vs. Pace*, 118 Fla. 468, 159 So. 679, the first headnote of which reads as follows:

"Fact that city operated docks and terminals in proprietary capacity, and that citizen invoking statutory right to inspect all municipal records was president of corporation competing with city and sought evidence for use in suit against city *held* no ground for denying right of inspection."

Answering your inquiry I beg to say in my opinion the tax roll in the hands of the Tax Collector is a public record and under the statute may be inspected by any citizen. Such inspection, however, should be under reasonable rules and regulations of the Tax Collector so that the work of the office may not be unreasonably interrupted or impaired.

November 12, 1938.

PROPERTY ASSESSMENT AFTER ACCEPTANCE OF TAX ROLL

Dear Sir:

I acknowledge receipt of your Western Union Night Letter of the 11th instant as follows:

"Please render opinion as to whether I can assess personal property tax to persons after tax roll has been accepted for collection in order that they may qualify for special district elections."

Section 934 of the Compiled General Laws provides that after the tax assessment rolls have been completed and so certified and the Assessor has issued and annexed one of said copies, the warrant required

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by law, and said warrant recorded in the minutes of the Board of County Commissioners they (the County Commissioners) shall not have power to change any assessment after the copies have been delivered to the Tax Collector and Comptroller and the original filed with the Clerk of the Court.

In *State ex rel. Gillespie vs. Thursby*, 104 Fla. 103, 139 So. 372, the Supreme Court said:

"There is no statutory authority for the Tax Assessors or the Board of County Commissioners to recall the tax rolls or to require the State Comptroller or Tax Collector to surrender over to anyone for any purpose, and there is good reason why they should remain in the possession of those officials. There must be a time for the cessation of the relation of the levying and assessing officers to the tax of each year, and there can be no better time than when the possession of the tax rolls pass to other parties. With the levy made, assessments completed, certificate of the board of county commissioners affixed to the tax rolls, the warrant to the tax collector issued, and the tax rolls delivered to the proper officials under the law, who are without authority to surrender them, it would not be possible for the assessment of the lands in the Ocean Shore improvement district to be changed, and it would be impossible for the board of county commissioners and the tax assessor to obey the peremptory writ of mandamus, if issued; they having become *functus officio* as to the tax."

As to your authority to assess personal property taxes for the present year, such an assessment would require an amendment to the assessment rolls for the present year if made at this time and that in turn would require the recall from the Comptroller, Tax Collector and Clerk of the Circuit Court of the assessment rolls now in their hands (assuming that they have been completed and turned over to said officials as required by law) and on the basis of the authority quoted from I am of the opinion that such amendment cannot legally be made for the purpose stated in your telegram or any other purposes. The matter having been called to your attention the duty devolves upon you to back assess this property as provided and required by law but this cannot now be done until next year.

April 21, 1937.

**SALARY UNDER CHAPTER 16,928 OF 1935—COMMISSIONS UNDER
SECTION 970, C.G.L. 1936 SUPPLEMENT**

Dear Sir:

I am in receipt of your letter of the 16th instant in which you make inquiry if the limitation of salary of the Tax Collector, under the pro-

TAX COLLECTORS

visions of Chapter 16,928, Laws of Florida, Acts of 1935, applies to 5% commission allowed Tax Collectors under Section 970, Compiled General Laws of Florida, 1936 Supplement, with reference to the 5% commission allowed for delinquent taxes when actual sale is made.

In reply your attention is called to the specific provision in Chapter 16,928 fixing the salary of the Tax Collector at \$5,000.00 and providing that the several officers mentioned in said Act, including the Tax Collectors, "shall from the fees and other receipts of their said offices retain as their compensation not more annually than shown below opposite the designation of said office." The language in this Act, in my opinion, definitely limits the salary of the Tax Collector, as well as the other officers named to the specific amount enumerated in said Act.

SECTION 13

COUNTY OFFICERS—MISCELLANEOUS

September 2, 1937.

BUDGETS—SECTION 9, CHAPTER 14,678 OF 1931—SECTION 2383,
(44) C.G.L. 1936 SUPPLEMENT*Dear Sir:*

I am in receipt of your letter of the 31st ultimo, the body of which reads as follows:

"Will you please advise whether Section 9 of Chapter 14678, Acts of 1931, limits expenditures of county officers, such as the clerk of the circuit court, sheriff, tax collector, tax assessor, county judge, to 95% of the amount appropriated by the county budget commission, or whether this limitation applies only to boards, such as the board of county commissioners, the board of public instruction, and county welfare boards."

Section 9 of Chapter 14,678, Laws of Florida, Acts of 1931, is now Section 2383 (44), Compiled General Laws of Florida, 1936 Supplement, and reads as follows:

"The county budget commission is hereby authorized and empowered to change, alter, amend, increase or decrease any item and total amount or amounts of any estimate of expenditures or receipts prepared or submitted by any board pursuant to this law, and to fix, determine and adopt a budget of all receipts and all expenditures for every such board. The county budget commission may also fix and determine the amount to be paid or allowed by the county during the ensuing fiscal year by or for each and every county officer for salaries of employees and deputies and for supplies and other expenses of the conduct of his office. Every such budget so adopted by the county budget commission for each such board shall be final and shall have the force and effect of fixed appropriations determined by the authority of law which shall not be altered, amended or exceeded in whole or in part by any such board or officer or member thereof. It shall be unlawful for any such board or any member or officer thereof to expend or to contract for the expenditure for any purpose during the ensuing fiscal year of more than ninety-five per cent. of the total amount appropriated for such purpose in and by the budget finally prepared and certified to such board by the county budget commission, and every member of such board voting for or knowingly approving such excessive expenditure or contract shall be deemed guilty of a misdemeanor and on conviction thereof he shall be punished in the manner provided by law for the punishment of misdemeanors, and in

COUNTY OFFICERS—MISCELLANEOUS

addition he and his sureties shall be jointly and severally liable to the county for such excess to be recovered in an action at law brought for and in the name of the county by the county budget commission or any taxpayer."

In reply I beg to say in my opinion the limitation of expenditures to 95% of the amount appropriated, provided for in said statute, applies only to boards and does not apply to County officials, such as you name in your letter.

June 24, 1938.

REPORT OF FUNDS COLLECTED ON ACCOUNT OF PROCEEDS OF
CERTIFICATES OF INDEBTEDNESS OR JUDGMENTS
AGAINST THE COUNTY

Dear Sir:

I am in receipt of your letter of April 19th, reading in part as follows:

"The decisions of the Supreme Court in *Lee vs. State*, 149 So. 67, and *Gay vs. McKinney*, 155 So. 845, provide that collections of earnings of former years by county officials shall be considered as income for the year in which earned and not for the year in which collected, and that the proportion of such collections that may be retained and any excess that may be due the county from such collections must be determined by adding such collections to the net income already reported for such year.

"In some cases the counties have been unable to pay the officials their fees when due and have given them certificates of indebtedness to indicate that the fees were due to the officials. Should such officials discount such certificates of indebtedness would this constitute income to be reported within the year in which the certificate was discounted?

"In other instances county officials have secured judgment against the county in instances where their fees could not be paid when due. If such judgments were discounted or sold, would this constitute income to be reported in the year in which the judgment was discounted or sold?"

In reply I beg to say that if such certificates of indebtedness or judgments are hypothecated or assigned by the officer, it is my opinion that the amount of the certificates or judgments should be reported as collections under Section 2867, Compiled General Laws of Florida, 1927, and Chapter 14,502, Laws of Florida, Acts of 1929, now Section 2877 (1), Compiled General Laws of Florida, 1936 Supplement.

COUNTY OFFICERS—MISCELLANEOUS

When the hypothecations or assignments are made to secure funds for the operation of the office, it is my opinion that any reasonable interest or discount charge may be properly charged to and reported as expenses of the office.

Since the fees of County officers belong to the office instead of the officer, the above opinion is not to be considered an approval of the hypothecating or assignment of such certificates of indebtedness or judgments.

June 9, 1937.

COMPENSATION WHEN OFFICE HELD BY MORE THAN ONE
OFFICER DURING YEAR—SECTION 2865 ET SEQ.,
COMPILED GENERAL LAWS

Dear Sir:

I am in receipt of your letter of the 10th ultimo, in which you state that some differences of opinion have arisen with reference to the compensation of county officers under Section 2865 et seq., Compiled General Laws of Florida, 1927, and particularly in instances where the office is held by more than one officer during a year. You mention several plans with reference to the division of compensation in such cases.

The law governing the compensation of county fee officers, and the excess income payable to the county, is explicit as to the disposition of the annual net income, but is silent as to the mechanics of dividing the income among the holders of the office when the office is occupied by more than one officer during the year. An examination of the law, however, reveals certain provisions which must be followed, and the application of these provisions, together with certain other general legal principles, leads to a solution of the problem.

These provisions and principles may be stated as follows:

1. Both the county and the holder of the office are entitled to certain amounts, which may be definitely calculated only at the end of the year, when the amount of the net income for the entire year is known. The amount to which the county is entitled should be the same, regardless of whether the office was held by more than one officer during the year, and likewise the total compensation to the office for the year should be the same, whether received by one officer or divided among several.

2. The income earned and collected for the year remains in the custody of the officer during the entire year, during which time he may pay the expenses of the office from such collections, and may make withdrawals for his own compensation, and he is not required to ac-

COUNTY OFFICERS—MISCELLANEOUS

count for and pay over to the county the excess due until after the end of the year.

3. The intent of the law is that, within certain limits, the compensation of an officer is determined by the amount he makes.

4. Any trust funds, or funds of that nature, held by an officer in his official capacity, should be delivered to his successor in office unless some other disposition is provided by law.

5. The expression "yearly" means for a calendar year, and "yearly compensation" for less than a calendar year would be calculated pro-rata for the time for which the compensation is payable.

Following the foregoing principles, and bearing in mind that it is necessary for the retiring officer to be able immediately to close out his accounts, it appears that a county fee officer holding the office for less than a year should, upon retiring from office, calculate his compensation by first determining the fraction of the calendar year during which he held the office, by dividing the number of days served by the total number of days in the year; this fraction should be applied to the first \$5,000.00, the next \$3,000.00, etc., provided in the law. For instance, if the officer served for one-fourth of the year, his compensation would be all of the first \$1,250.00 ($\frac{1}{4}$ of \$5,000.00), 60% of the next \$750.00 ($\frac{1}{4}$ of \$3,000.00), etc., but he would not be permitted to retain more than \$1,875.00 ($\frac{1}{4}$ of \$7,500.00).

After retaining his compensation, the officer should pay over the excess to his successor, to become a part of the office account from which the expenses of the office are paid. He should also make an accounting to his successor of the receipts and expenses of the office for the part of the year served by him.

At the end of the year, the person holding the office should, in his report, account for the receipts, expenses, and net income for the entire year (the figures for each officer may be shown separately), and calculate the compensation and excess for the entire year, in the same manner as if the office had been held by only one officer. He would then be entitled to the compensation remaining after deducting the compensation retained, as outlined above, by his predecessor, and should pay the excess so calculated to the county.

By this method, the retiring officer may immediately close out all of his accounts, any excess earned by him will be available to carry the office over slack periods resulting from seasonal character of the business, just as it would be available if he had continued in office, and, at the end of the year, both the county's share of the income and the compensation of the officer are exactly the same as if no change in tenure had occurred.

COUNTY OFFICERS—MISCELLANEOUS

November 2, 1937.

FEES—SECTION 2827, C.G.L. DOES NOT SUPERSEDE
SECTION 8210 C.G.L.*Dear Sir:*

Replying to your letter of October 30, 1937, it is my opinion that Section 2827 of the Compiled General Laws of Florida, 1927, does not supersede the provisions of Section 8210 of the Compiled General Laws of Florida, requiring the Clerks of all courts other than the Clerk of the Circuit Court and the County Judge and Justices of the Peace, to certify to the Clerk of the Circuit Court the names of all persons convicted of crimes in their respective courts, with a statement of the crime for which conviction was had, within twenty days after the date of conviction.

In other words, both Section 8210 and 2827 of the Compiled General Laws of Florida, are still in full force and effect.

The fees for certificates required by Section 8210, Compiled General Laws, shall be as follows:

For clerks of all courts other than the county judge's court and justice of the peace court, for the first 100 words, 25c; each additional 100 words and fraction thereof, 12½c.

For county judges and justices of the peace, for the first 100 words, 20c; each additional 100 words and fraction thereof, 10c.

The above scale of fees applies for making reports required by Section 2827 of the Compiled General Laws of Florida, that is to say, the clerks of all courts other than the county judge and justice of the peace, for the first 100 words, 25c; each additional 100 words and fraction thereof, 12½c.

For county judge and justice of the peace for the first 100 words, 20c; each additional 100 words and fraction thereof, 10c.

July 13, 1938.

FEE OFFICERS—COMPENSATION

Dear Sir:

Your letter of January 25, 1938, relating to compensation of county officers has been held for reply pending the decision of our Supreme Court in certain cases affecting your inquiry.

The body of your letter reads as follows:

"The Circuit Court in Hillsborough County recently held that Chapter 17852, Acts of 1937, and other population acts re-

COUNTY OFFICERS—MISCELLANEOUS

lating to the compensation of the county fee officers of that County were invalid. It appears that this places the income of these officers under the general law, Section 2865, Compiled General Laws of Florida, 1927. Will you please advise when the officers will be entitled to the increased compensation provided by Section 2865? That is, will they be entitled to this compensation from the beginning of their term of office, or from January 1, 1937, or from the date of the court decision, or will the limitation of one year on claims against the County be effective?"

Your attention is called to the case of State of Florida, ex rel John B. White versus James M. Foley, as Chairman of the County Commissioners of Polk County, et al., decided by the Supreme Court on May 26, 1938.

Your attention is also called to the case of State of Florida upon relation of John D. Baker, individually, and as Clerk of the Civil and Criminal Courts of Record of Duval County, et al., versus B. T. Gray, Fred E. Biggs, et al., as County Commissioners of Duval County, et al.

In the above Polk County cases, there is no showing of retention of any funds by the county official in settlements with the county, and the language of the Court must be considered in connection therewith. I quote you from the body of the opinion as follows:

"Chapter 16925, Acts of 1935, is invalid from its enactment; but the relator acquiesced in its operation by making the reports required by the Act, by submitting his salary as \$4800 to the Budget Commission, by paying a filing fee based on the salary allowed him by this statute, when he was a candidate for the office, and by accepting compensation under this statute since its enactment, prior to the institution of this mandamus proceeding, thereby waiving pro tanto his rights under the general law regulating his compensation. See *State vs. Messerly*, 198 Mo. 351, 95 S. W. 913; *Saylor vs. Trotter et al.*, 148 Tenn. 359, 255 S. W. 590, Fed. 257 S. W. 93; 12 C. J. 770.

"The portion of the alternative writ demanding the higher rate of compensation for the years prior to the institution of this action, does not conform with the last paragraph of this opinion, and the demurrer to the alternative writ must, for that reason, be sustained.

"In the case of *State ex rel vs. Foley*, 160 So. 522, 118 Fla. 885, this Court recognized the rule that a plea of estoppel, waiver, or laches is ineffective as to unsettled current or future accounts, the second headnote being:

'In mandamus proceeding by Polk County tax collector to enforce right to compensation under general statutes, on ground

COUNTY OFFICERS—MISCELLANEOUS

that bill applicable solely to Polk County, under provisions of which tax collector has been remunerated, never became law, plea of estoppel, waiver, or laches held ineffective as to unsettled current or future accounts, since laches, waiver, or estoppel cannot permanently bind officer to follow course of past official conduct in contravention of applicable general law, nor give effect of permanently enforceable statute, to bill which was never properly passed.'"

I now quote from the body of the opinion in the Duval County case as follows:

"The monies involved here had not been paid into the county but were still held by the officers and reported with claim for compensation therefrom.

"In *State ex rel Hughes vs. Caruthers*, filed March 30, 1938; reported 180 Sou. 27, we held:

'1. Under statute allowing tax collector commission on sale of tax certificates when actual sale is made, a tax collector cannot recover compensation after expiration of term of office as to any counties wherein tax collector received the maximum compensation allowed him during his incumbency in office, but, in counties in which tax collector's compensation has not amounted to maximum, he is entitled to 5 per cent. commission on all amounts received for certificates redeemed. *Comp. Gen. Laws Supp. 1932, No. 970.*

'2. Under statute respecting payment of commissions to tax collector upon sale of tax certificates, tax collector who during his incumbency in office from 1913 to 1936 did not receive as compensation the amount allowed as maximum by law, was entitled to be paid 5 per cent. as commission on all amounts received for certificates redeemed according to statute, notwithstanding that he was no longer in office. *Comp. Gen. Laws Supp. 1932, No. 970; Acts 1937, c. 18296.*

"Now, certainly if the Tax Collector who earned fees by issuing tax certificates during his tenure of office from 1913 to 1936 is entitled to have those fees paid over to him when the certificates are sold or redeemed long after his term of office has expired, the county officers have involved are not estopped to have the compensation earned in 1936 paid out of monies received for that service in 1937.

"For the reasons stated, the peremptory writ should issue and it is so ordered."

The above two decisions when applied to the facts as they may exist in connection with your inquiry will control.

CHAPTER IV

COURTS

SECTION 1

CIRCUIT JUDGES

May 19, 1937.

APPOINTMENTS AND TERM OF OFFICE, SIXTH JUDICIAL CIRCUIT

Dear Sir:

I am in receipt of your letter of this date making inquiry if it would be legal for you to send the name of Circuit Judge T. Frank Hobson to the Senate for confirmation as Circuit Judge of the Sixth Judicial Circuit of the State of Florida for a term of six years from July 30, 1935, under the terms of Chapter 17,085, Laws of Florida, Acts of 1935. You make further inquiry if the same would in any manner adversely affect the interest of any other Judge. You further call attention to the case of State ex rel. Landis vs. Bird, et al., 163 So. 248, 120 Fla. 780.

Section 1 of Chapter 17,085 provides that the Sixth Judicial Circuit shall be composed of Pinellas and Pasco Counties and shall have two Circuit Judges.

Under the Constitution and statutes and the decision of our Supreme Court, in the case of State ex rel. Landis vs. Bird, et al., supra, I see no reason why Judge Hobson may not be appointed and confirmed Circuit Judge of the Sixth Judicial Circuit for the term ending six years from July 30, 1935, in the manner pointed out in the last paragraph of the opinion in that case.

Such action would not affect Judge Bird or Judge Viney under their present commissions, nor would it, in my opinion, affect any other Judge of another Circuit.

October 7, 1938.

AUTHORIZED TO APPOINT COUNSEL

Dear Sir:

In response to your inquiry as to your power to appoint another attorney for an insolvent defendant in a capital case where you have already appointed one attorney who has done considerable work in the case, but with whom the defendant is dissatisfied, I will state that the statute governing this procedure is Section 8375, Compiled General Laws 1927, which is as follows:

"After any person shall be indicted for felony or for a misdemeanor, or after an information shall be filed against him, if

CIRCUIT JUDGES

he be not already in custody, a *capias* shall issue for his arrest and shall be directed to all and singular the sheriffs of the State of Florida, and when the grand jury shall have presented to the circuit court a bill of indictment for felony, and the accused be in custody, the court shall cause him to be arraigned and tried at the same term, unless good cause be shown for a continuance, and the judge shall appoint such counsel in all capital cases where the defendant is insolvent as he shall deem necessary, and shall allow such compensation as he may deem reasonable, such sum to be paid by the county in which the crime was committed: Provided, however, no such compensation shall in any case exceed fifty dollars."

You will note that the Statute provides:

"And the Judge shall appoint such counsel in all capital cases where the defendant is insolvent as he shall deem necessary."

Under this provision, I think if you deem it necessary to appoint additional counsel for this defendant that you may do so. However, as you will see, the Statute specifically provides that compensation to all counsel in such cases shall not exceed the sum of \$50.00. It appears to me therefore that you could order the first attorney to be paid a reasonable sum and the second to be paid a further reasonable sum provided however that compensation for both attorneys does not exceed \$50.00, as provided by this statute.

April 11, 1938.

POWER TO APPOINT TEMPORARY SHERIFF

Dear Sir:

In response to your request of the instant date for my opinion as to the power of the Circuit Judge to appoint a Sheriff of a County in his jurisdiction where on account of the death of, or for any other reason the office is vacant, or the Sheriff is incapacitated to act, I would state that under the provisions of Section 4238, Compiled General Laws, 1927, the Circuit Judge may appoint an *elisor* to act instead of the Sheriff where the Sheriff is interested in process which his office has to serve, and in all other cases of necessity. This statute does not contemplate the appointment of an *elisor* other than for the performance of one particular act or duty.

Under the provisions of Section 4574, Compiled General Laws, 1927, which is as follows:

"Whenever any sheriff or coroner in the State, shall fail to attend in person or by deputy any term of the circuit court,

CIRCUIT JUDGES

county court or criminal court of his county from sickness, death or other cause, the judge attending said court shall have power to appoint a Sheriff, who shall assume all the responsibilities, perform all the duties, and receive the same compensation as if he had been duly appointed Sheriff, for said term of court and no longer."

Whenever any Sheriff shall fail to attend in person, or by deputy any term of any court in his county on account of sickness, death or other cause, the Judge attending said court has power to appoint a Sheriff for said term of court, and no longer.

The Winter Term of the Circuit Court in Walton County begins on the second Monday in January, and I am informed that this term of Court has already been closed. The next regular term of the Circuit Court in Walton County begins on the second Monday in May of this year. I am not familiar with the terms of the County Court. It therefore appears from the above statute that the Judge of the County Court or the Circuit Court would have authority to appoint a Sheriff for Walton County for the particular term of Court at which the Sheriff failed to appear.

January 27, 1937.

TRAVELING EXPENSES—CHAPTER 16,184 OF 1933

Dear Sir:

I am in receipt of your letter of the 18th instant in which * * * you make inquiry if the restricted allowance of \$4.50 per day applies to Circuit Judges holding Courts away from home.

In reply I beg to say in my opinion Chapter 16,184, Acts of 1933, now Section 242 (1), Compiled General Laws of Florida, 1936 Supplement, does not apply to Circuit Judges who are constitutional officers traveling or holding Courts away from their own homes as required under the Constitution and laws of this State, but in my opinion such officers would be entitled to actual necessary and reasonable subsistence expenses in the performance of such duties.

SECTION 2

STATE ATTORNEYS

May 1, 1937.

ASSISTANT—CYCLE OF TERM—13 JUDICIAL CIRCUIT

Dear Sir:

I am in receipt of your letter of yesterday in which you state a question has arisen with reference to the correct cycle or term of office for the Assistant State Attorney of the 13th Judicial Circuit. You further state an appointment was made of an Assistant State Attorney for said Circuit and commissioned "until the end of the ensuing session of the Senate unless in the meantime his successor is appointed and confirmed." You advise further that the Governor has sent an appointment of an Assistant State Attorney for this Circuit to the present Senate and you make inquiry how the commission for this appointee should be prepared with reference to the time for which such commission shall run.

Chapter 17,085, Laws of Florida, Acts of 1935, is an Act redistricting the State of Florida into Judicial Circuits, in accordance with the requirements of Article V, Section 45 of the State Constitution adopted at the General Election November 6, 1934. Section 1 of said Act provides that there shall be fifteen Judicial Circuits in the State and specifically names the County or Counties composing each Circuit. With reference to the 13th Circuit, said Section provides as follows: "The Thirteenth Judicial Circuit shall not be affected by this Act but shall remain as provided under existing law." The existing law makes the 13th Circuit to consist only of Hillsborough County, which has a population according to the 1935 Census of 159,208.

Chapter 17,085 must be construed in connection with Article V, Section 45 of the State Constitution, paragraph (a) of which provides that there shall be no more than fifteen Judicial Circuits of the State to be appropriately designated, numbered and defined by a suitable law enacted by the Legislature for that purpose. Paragraph (b) of said Section makes it the duty of the Legislature to make effective the *reapportionment* of Judicial Circuit. Paragraph (e) provides that the *reapportionment* of Circuits shall become effective 60 days after the Act providing for same shall have become a law. Taking into consideration the language of Article V, Section 45, it is clear that a reapportionment was required under such provision and that Chapter 17,085 of 1935 is a reapportionment and redesignation of Circuits in compliance with such constitutional mandate. It, therefore, appears that the 13th Judicial Circuit mentioned in Chapter 17,085 is one of the fifteen redesignated Circuits under the provisions of said Act, notwithstanding the language of said statute with reference to such Circuit to the effect that said Circuit should not be affected by the Act. Furthermore, such language with

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reference to the Circuit would have no application to Chapter 16,784 of 1935, which provides a new and definite statute providing for and regulating the office of Assistant State Attorneys.

Chapter 16,784 of 1935, above mentioned, is an Act *creating* and providing for the appointment, terms of office, etc., of Assistant State Attorneys in the Judicial Circuits of the State *created under the provisions of Section 45 of Article V of the State Constitution*. In order for the appointment of any Assistant State Attorney in the 13th Judicial Circuit it must be assumed that said Circuit is one of the fifteen Circuits created under said constitutional provision. It, therefore, follows that the appointment of any Assistant State Attorney to such Circuit must be governed by the provisions of said Chapter 16,784. Section 5 of said Act provides for the appointment of Assistant State Attorneys in Judicial Circuits having a total population of more than 190,000 according to the last State Census, which does not apply to the 13th Judicial Circuit which has a population of 159,208. Section 3 of said Act governs with reference to Circuits having a population of less than 190,000 and provides for the appointment of Assistant State Attorneys in such Circuits *whose terms of office shall be for four years*. Your attention is now called to Section 6 of said Act which provides that the Act and all appointments under the Act shall take effect 60 days after the same becomes a law. Said Act was approved June 1, 1935, which made the Act and all appointments under the Act effective on July 31, 1935.

In view of the foregoing, it is my opinion that the term of office of the Assistant State Attorney of the 13th Judicial Circuit is 4 years from July 31, 1935, and any commission of an appointee to this office confirmed by the present Senate should be for the balance of said term which expires July 31, 1939.

August 18, 1937.

ASSISTANT—SENATE NOT REQUIRED TO CONFIRM APPOINTMENT

Dear Sir:

I acknowledge receipt of your letter of the 16th inst., advising that you have appointed Honorable James H. Bunch as Assistant State Attorney for the Fourth Judicial Circuit of Florida and in which you ask to be advised whether this appointment has to be confirmed by the Senate and for what length of time it should run.

The Assistant State Attorney for the Fourth Judicial Circuit of Florida is appointed by you under authority of Section 4759, Compiled General Laws of Florida, Supplement, and this appointment is not required to be confirmed by the Senate. The Act under which this appointment is made provides that the term of office of such Assistant

STATE ATTORNEYS

State Attorney shall expire with that of the State Attorney of the Fourth Judicial Circuit. He should therefore be appointed and commissioned so as to have his term of office run concurrently with and expire at the same time as that of the State Attorney for the Fourth Judicial Circuit.

April 18, 1938.

**AUTHORIZED TO PROSECUTE—COUNTY SOLICITOR,
DISQUALIFIED—SECTION 8247 C.G.L.**

Dear Sir:

I acknowledge receipt of your letter of the 18th, in which you state that the County Solicitor of Hillsborough County, being one of the indicted parties, has disqualified himself and it becomes necessary for you to send someone to the Criminal Court of Record to take his place.

You request that I advise you whether or not you can designate one of the State's Attorneys of the State of Florida to prosecute these cases in Hillsborough County.

When the Hillsborough County flogging cases were transferred to the Criminal Court of Record of Polk County, the then Governor of the State, Honorable David Sholtz, assigned the Honorable J. Rex Farrior, State Attorney of the 13th Circuit of Florida, to proceed to Bartow and officiate as State's Attorney of the 10th Judicial Circuit of Florida in order to prosecute the flogging cases.

The Attorney General advised the Governor:

"The Constitution provides for the appointment of a state attorney for each judicial circuit, and his duties are to be provided by law. The Constitution also provides for the appointment of a county solicitor of the criminal court of record, where such courts are established, and his duties are to be provided by law. The law then provides that the state attorney shall prosecute all criminal causes in the circuit courts of his district; and the law provides that the county solicitor shall handle the criminal prosecution of all causes that are tried in the criminal court of record. There is a provision of the law whereby the transfer may be made of a state attorney from his circuit to another circuit, but I find no provision whereby a state attorney may be transferred to try a case in the criminal court of record. Neither do I find that there is any law authorizing the transfer of a county solicitor from one criminal court of record to another, but to take care of this situation the Legislature has provided that the judge of the criminal court of record in the case of death, vacancy, inability or necessity may appoint an acting county solicitor to prosecute in the criminal court of record under these circumstances. There is another section of the statute,

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to-wit: Section 8243 of the Compiled General Laws, which provides that the county solicitor may appoint an assistant county solicitor. This usually is done in open court, and the statute, after referring to it, requires that an oath be administered, and that a minute of this appointment be made and entered in the minutes of the court."

During the progress of the flogging cases the State's Attorney, the Honorable J. Rex Farrior of Hillsborough County, filed an affidavit suggesting the disqualification of the trial judge for prejudice and the trial judge proceeded to disqualify himself. A recent writ of mandamus was issued to require Judge Dewell, the trial judge, to assume jurisdiction in the case. The question was raised that the State's Attorney, who was sworn in as Assistant County Solicitor, had no authority to make the affidavit of disqualification. (I might state here that the record in the flogging cases shows that after being assigned to officiate as State's Attorney of the 10th Judicial Circuit, Mr. Farrior was appointed by the Solicitor of the Criminal Court of Record of Polk County as Assistant County Solicitor to assist in the prosecution of these cases.)

The Supreme Court of Florida, in the case of *State ex rel. Brown, et al., vs. Dewell, Judge*, reported in 179 So. 693, says:

"The second question with which we are confronted may be stated as follows: Is any assistant county solicitor who has been regularly sworn in and designated as such authorized to make the affidavit of disqualification provided in Section 4341, Compiled General Laws, 1927."

Again in the opinion the Court said:

"The duties of county solicitors are the same as those of state's attorneys, Section 5241, Compiled General Laws, 1927, and both represent the State in criminal prosecution. Assistant county solicitors can perform any duty that county solicitors can perform, except the signing and filing of informations. The filing of the affidavit of disqualification is not jurisdictional, and is such an act as an assistant county solicitor is competent to perform."

It is my opinion that you may require a state's attorney to proceed to Tampa under an assignment to assist the State's Attorney of the 13th Judicial Circuit and that the Judge of the Criminal Court of Record of Hillsborough County may, under Section 8247, Compiled General Laws, appoint the said State's Attorney acting County Solicitor of the Criminal Court of Record of Hillsborough County to prosecute the cases in which the County Solicitor is disqualified.

You will note that under said section the Judge shall administer an oath to faithfully discharge the duties of County Solicitor. The

STATE ATTORNEYS

minutes of the Court should show that the State's Attorney was appointed acting County Solicitor by the Judge of the Criminal Court of Record and that he took the oath in question.

August 30, 1938.

**AUTHORIZED UNDER SECTION 4741, C.G.L. TO CAUSE PROCESS TO
ISSUE AND SUMMON WITNESSES**

Dear Sir:

In your letter of the 19th instant you ask whether under Section 4741 of the Compiled General Laws of Florida, 1927, you have authority as State Attorney to cause process to be issued and have witnesses brought before you to inquire into the commission of crime of which the Circuit Court does not have trial jurisdiction.

The amendatory provision of Section 4741, Compiled General Laws, 1927, should be construed as a legislative policy and intent to broaden the inquisitorial powers of the State in apprehending violators of the criminal statutes, so as to give to State Attorneys the power to summon witnesses to appear before them in or out of term time to testify before them as to any violation of the criminal law upon which they may be interrogated, in order that the State Attorneys may be informed in such matters and act accordingly either in the matter of filing informations in cases where they have the constitutional authority so to do, or in laying the result of their investigations before their respective grand juries for consideration and such action as may be determined upon, and that this power extends throughout the State.

I am therefore of the opinion that as State Attorney you have the power and authority under Section 4741 to cause process to be issued and have witnesses brought before you to inquire into the commission of crime throughout your circuit, including the county in which there is a criminal court of record, and regardless of whether the crime so investigated is within the trial jurisdiction of the Circuit Court.

February 17, 1937.

BASTARDY PROCEEDINGS—DUTIES

Dear Sir:

I am in receipt of your letter of the 11th instant making inquiry if it is your duty as State Attorney to represent the State in bastardy proceedings.

Sections 5876-5880, Compiled General Laws of Florida, 1927, originally passed in 1828, except as to Section 5879, which prescribe that any

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single woman pregnant or delivered of a child who by law would be termed "a bastard" may make complaint to the County Judge or the Justice of the Peace and accuse some person of being the Father of such child and provides process to bring such person before such Court, and if the Court be of the opinion that sufficient cause appears, such person shall be bound over to the next term of the Circuit Court. Section 5877 provides that the Circuit Court shall have jurisdiction of such charge of bastardy and shall cause an issue to be made up whether the reputed Father is the real Father of the child or not, which issue shall be tried by a jury.

In the case of Andrew G. vs. Catherine A., 16 Fla. 830, it was held that such proceedings should be conducted in the name of the State and that the lower Court in said case erred in making up and issue between the accuser and the accused instead of between the State of Florida and the accused. Commenting in this connection, the Court used the following words shown on page 834 of said opinion:

"* * * The proceeding should be conducted in the name of the State: the issue is between the State and the defendant; it concerns the people and the defendant, and the case is a 'prosecution' within the meaning of Sec. 2, Art. 6, of the Constitution."

Section 2, Article VI of the Constitution of 1868, referred to in the above quotation contains the identical language found in Article V, Section 37 of our present Constitution, which reads as follows:

"The style of all process shall be 'The State of Florida' and all prosecutions shall be conducted in the name and by the authority of the State."

Article V, Section 15 of the State Constitution, provides for the appointment of State Attorneys and that their duties shall be prescribed by law.

Section 4739, Compiled General Laws of Florida, 1927, with reference to powers and duties of State Attorneys reads as follows:

"It shall be his duty to appear in the circuit court within his judicial circuit, and prosecute or defend on behalf of the State all suits, applications or motions, civil or criminal, in which the State is a party."

In view of the above it is my opinion that it is the duty of the State Attorney to represent the State in bastardy proceedings under Sections 5876 to 5880, Compiled General Laws of Florida, 1927, unless competent counsel is otherwise provided for such purpose.

STATE ATTORNEYS

March 26, 1937.

EXPENSES OUTSIDE OF STATE

Dear Sir:

Your letter of the 19th instant addressed to Hon. J. M. Lee, State Comptroller, has been referred to this office for reply. You state in connection with proceedings for disbarment of attorney it may be necessary for you to go to Wedowee, Alabama, to take depositions and make an investigation and you make inquiry if expenses of this trip can be charged to the State as part of his duties as State Attorney. Your further make inquiry if the usual forms for requests for transportation will be applicable and acceptable to carriers in the event you travel by common carrier.

In reply your attention is called to Section 4172, Compiled General Laws of Florida, 1927, with reference to the duty of the Circuit Judge in disbarment proceedings which states that should be the duty of such Judge to direct the State Attorney for the Circuit to make in writing a motion, in the name of the State, to disbar such attorney, setting forth in the motion the particular acts or conduct for which the attorney is sought to be disbarred. Your attention is further called to Sections 4414 and 4415 of the same compilation with reference to depositions in disbarment proceedings.

In case of State ex rel. Parker vs. Lee, 113 Fla. 40, 151 So. 491, the Court held that the expenses of a State Attorney in transacting official business within a Circuit but outside the County of his residence held "necessary and regular expense" within statute allotting specified amount for "necessary and regular expense" of Judicial Department and referred to the General Appropriation Act, Chapter 15,858 of 1933, containing such provision for expenses. The discussion of the matter by the Court concludes with this statement:

"We therefore conclude that any expense incurred by state attorneys in the performance of the duties imposed on them by law, outside the county of their residence, may be paid under chapter 15858, Acts of 1933, so long as such expenses are within the terms of Chapter 16184, Acts of 1933."

Chapter 16,772, the General Appropriation Act of 1935, under the head of Judicial Department contains an appropriation for "necessary and regular expenses" in like manner as Chapter 15,858, Acts of 1933.

In view of the above it is my opinion that if it is necessary to make such trip out of the State to comply with the directions of the Circuit Judge reasonable and necessary expenditures for such purpose may be charged against the State. Since such a trip is not commonly required I would suggest that it would be well to accompany your requisition for such expenses with an affidavit as to the necessity for the same, as well as to the amount.

STATE ATTORNEYS

Answering your second inquiry I beg to say I think the request transportation form will be applicable for travel by common carrier outside of the State and should be acceptable to carriers. To avoid any difficulties in reference to such forms being accepted it might be well to secure round trip passage from your home City to point of destination.

July 7, 1937.

SALARIES SEVENTH CIRCUIT

Dear Sir:

I am in receipt of your letter of the 25th ultimo with reference to the amount of your salary as State Attorney of the Seventh Judicial Circuit.

In reply I beg to say the records in the office of the State Comptroller show that your salary during 1931, 1932, and the first half of 1933 was \$3300.00 per annum, which amount was reduced to \$3,000.00 per annum under Chapter 15,859, Acts of 1933. I find no subsequent statute changing said amount.

With reference to the Sixth Circuit I refer you to the following statutes: Chapters 12,265 and 12,276, Acts of 1927, Chapter 15,720, Acts of 1931, and Chapter 15,859, Acts of 1933.

July 2, 1937.

STENOGRAPHER'S SALARY AUTHORIZED UNDER CHAPTER
18,147, ACTS OF 1937

Dear Sir:

I am in receipt of your letter of the first instant, the body of which reads as follows:

"House Bill No. 126 of the Acts of 1937, which is designated as Chapter 18147, authorizes the State Attorney in certain judicial districts to employ a stenographer at a salary of not to exceed \$125.00 per month. Pursuant to that authority the State Attorney of the 4th Judicial Circuit has employed Mabel Barnes and she has submitted her requisition for salary from June 21st through June 30th, 1937, in the sum of \$41.66."

The law in question provides:

"Said salary to be paid by the State Treasurer."

It is requested that you advise me if this is an appropriation of the amount necessary to pay stenographers employed under this Act."

In reply I beg to say in my opinion the above quoted language from Chapter 18,147, Laws of Florida, Acts of 1937, is a legislative appropriation for the purposes of said Act.

SECTION 3

COURTS—MISCELLANEOUS

September 13 ,1937.

APPEALS—COSTS

Dear Sir:

I have your letter of September 2nd, wherein you request an opinion as to whether or not it is a necessary requisite that the accrued costs be paid by a defendant before taking an appeal from the Justice Court to the Circuit Court, when defendant has been tried by a jury, convicted, and sentenced.

I wish to advise that in my opinion it is not necessary for the defendant to pay the accrued costs, for the reason that I do not find any statute so requiring. The statute providing for appeals, being Section 8461, Compiled General Laws of Florida of 1927, is, "any person convicted in the Court of a County Judge or of a justice of the peace shall have an appeal to the Circuit Court under the restrictions imposed by law."

And Section 8471 provides:

"Appeals from a judgment or sentence of conviction in the court of a county judge or a justice of the peace shall be taken within thirty days from the date of the judgment or sentence." Section 8472, providing for a supersedeas, reads:

"Supersedeas. Such appeal shall operate as a supersedeas if the appellant shall enter into a bond with one or more sufficient sureties, to be approved by the court entering judgment or sentence of conviction, conditioned to appear before the Circuit Court of the county at its next ensuing term, and to abide its judgment thereon."

You will note that this section of the statute is silent with respect to the payment of accrued costs, whereas the statute, being Section 8465 of the Compiled General Laws of 1927, relating to supersedeas upon a writ of error from courts other than the justice of the peace courts, especially provides for payment of costs before a supersedeas becomes effective.

Section 8465 is as follows:

"In no case * * * shall a writ of error be a supersedeas to the execution of judgment, sentence, or order complained of, except upon payment by the plaintiff in error of all costs which have accrued in the case up to that time, and upon his entering into bond with two or more sufficient sureties according to

COURTS—MISCELLANEOUS

law * * * that the plaintiff in error shall be personally forthcoming to answer and abide the final order * * *."

I might also point out that the provisions of the statute relating to practice on writs of error provide for an oath of insolvency for defendants who are unable to pay the costs, whereas there is no such provision in any of the sections of the statute relating to appeals from justice of the peace courts.

It is therefore apparent from a consideration of the various sections of the statute upon the subject, that the legislative intent is that when a bond is filed in accordance with Section 8472 hereinbefore quoted, it is not necessary for defendant to pay accrued costs in order to supersede the judgment of the justice of the peace court, and vest jurisdiction in the circuit court.

As to your question as to what papers must be filed by the defendant, in answer would say that upon the bond provided by Section 8472 being filed, it then becomes your duty without the filing of any more papers by the defendant to comply with Section 8473 of said statutes, which provides:

"The judge of the court from which an appeal is taken shall make especial return of the proceedings had before him, and shall cause it with the bond aforesaid and also the affidavit, warrant, and return of all other papers pertaining to the trial, to be filed in the said circuit court on or before the first day of its next term * * *."

November 10, 1937.

BONDS—DEPOSIT WITH STATE TREASURER—CHAPTER
15996 OF 1933

Dear Sir:

I am in receipt of your letter of the 8th instant, the body of which reads as follows:

"Will you please advise whether bonds such as cash bail bonds, cash replevin bonds, cash garnishment bonds, cash supersedeas bonds, etc., are to be deposited with the State Treasurer under Chapter 15996, Acts of 1933, or whether this Chapter applies only to funds such as are generally known as Registry of the Court funds."

In reply I beg to say in my opinion Chapter 15,996 of 1933 is intended to apply only to such funds as are generally known as Registry of the Court funds. I do not think it applies to bail bonds but it would appear to apply to the other class of bonds mentioned in your letter.

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September 1, 1937.

CIRCUIT COURTS, JURISDICTION—VIOLATION LIQUOR STATUTES
—CHAPTER 16,774, 1935—CHAPTER 18002, 1937—CHAPTER 18015,
1937—CHAPTER 18016, 1937—SECTION 7104, C.G.L., 1927

Dear Sir:

I am in receipt of your letter of the 20th ultimo calling attention to that part of Section 15 of Chapter 16,774, Laws of Florida, Acts of 1935, reading as follows:

"* * * Any person violating any other provision of this Act shall be guilty of a misdemeanor and shall upon conviction be punished by imprisonment in the county jail for not more than six months or by a fine of not more than \$1,000.00, or by both such fine and imprisonment. Provided that any person, who shall have been convicted of a violation of any provision of this Act, shall thereafter be convicted of a further violation of this Act shall, upon conviction of said further offense, be deemed guilty of a felony and shall be punished by imprisonment of not less than one year nor more than five years in the State Penitentiary or fined not more than \$5,000.00, or by both such fine and imprisonment."

You also call attention to Chapter 18,015, Laws of Florida, Acts of 1937, and particularly Section 14 of said Act, which reads as follows:

"Unless otherwise provided the violation of any of the provisions of this Act shall be a misdemeanor and shall be punished as such."

You also refer to Section 7104, Compiled General Laws of Florida, 1927, reading as follows:

"The punishment for commission of crimes other than felonies in this State, when not otherwise provided by statute, or when the penalty provided by such statute is ineffectual because of constitutional provisions, or because the same is otherwise illegal or void, shall be a fine not exceeding two hundred dollars or imprisonment not exceeding ninety days, or both, at the discretion of the court."

You make inquiry as to what law governs as to the penalty for violation of Chapter 16,774, Laws of Florida, Acts of 1935, and in what Court first offenders and second offenders, respectively, should be prosecuted in Leon County, which is a dry county and has no County Court or Criminal Court of Record. In connection with your inquiry I also want to call your attention to Chapter 18,016, Laws of Florida, Acts of 1937, with reference to dry counties, Section 4 of which provides a

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penalty of \$500.00 or imprisonment in the County Jail for not more than six months, or both such fine and imprisonment in the discretion of the Court.

Article V, Section 11, of the State Constitution provides that the Circuit Courts shall have exclusive original jurisdiction of all criminal cases, not cognizable by inferior courts, and original jurisdiction of such other matters as the Legislature may provide.

Article V, Section 17, of the State Constitution provides that the County Judge shall have original jurisdiction of such criminal cases as the Legislature may prescribe.

Section 8295, Compiled General Laws of Florida, 1927, provides that the County Judge shall have and exercise such criminal jurisdiction as is held and exercised by the Justices of the Peace, except that his territorial jurisdiction shall extend throughout the county.

Section 8295, Compiled General Laws of Florida, 1927, provides that in counties where there are no County Courts or Criminal Courts of Record Justices of the Peace shall have power to hold a Court to try and determine all misdemeanors committed in their respective districts punishable by fine not exceeding \$500.00 or by imprisonment not exceeding six months, or by both such fine and imprisonment.

Chapter 18,002, Laws of Florida, Acts of 1937, amends said Section 8289, Compiled General Laws of Florida, 1927, to read as follows:

"In Counties where there are no County Courts or Criminal Courts of Record, the County Judges shall have power to hold a Court to try and determine all misdemeanors committed in their respective counties, punishable by fine not exceeding Five Hundred (\$500.00) Dollars or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment."

It, therefore, appears that the County Judge's Court is the proper court in Leon County to try violations of Chapter 18,016 of 1937; that the County Judge's Court in Leon County is the proper court to try violations of the provisions of Chapter 18,015 of 1937, except the two Sections of Chapter 16,774 amended by said Act; that the Circuit Court in and for Leon County is the proper court to try all violations of the provisions of Chapter 16,774 of 1935, including the two sections of said Act amended by Chapter 18,015 of 1937, but excluding all violations under Chapter 16,774, which may be covered by the later statutes, Chapter 18,016, and Chapter 18,015 of 1937.

In connection with the above your attention is called to the case of McLeod vs. Sebring, Judge, 127 Fla. 441, 173 So. 153, in which our Supreme Court held that the Circuit Court has jurisdiction of misdemeanors punishable by fine of more than \$500.00 in counties where there

COURTS—MISCELLANEOUS

is no Criminal Court of Record, which is in line with an opinion from this office relating to Section 15 of Chapter 16,774 of 1935, the Beverage Statute, in which I stated that "the Circuit Court, in counties where there are no County Courts, Criminal Courts of Record or Courts of Crimes, would have jurisdiction of all prosecutions for violations of the Act."

March 15, 1937.

COMMITTING MAGISTRATE—FEES

Dear Sir:

I am in receipt of your letter of the 10th instant enclosing communication from Mr. Lawrence Rogers, Attorney for Osceola County. Mr. Rogers makes the following inquiries:

"First: Where the committing magistrate has issued a warrant charging a certain offense but the defendant is not arrested under such warrant and thereafter, upon information or indictment charging substantially the same offense the defendant is arrested, is the committing Magistrate entitled to his costs?

"Second: Where a County Judge or Justice of the Peace has issued a warrant charging a crime of a public nature, upon affidavit of the Sheriff, Deputy Sheriff, or Constable, and the proper prosecuting official refuses to file an information against the defendant, is the County Judge or Justice of the Peace entitled to his costs for issuing such warrant?"

Answer to the above inquiries must be based on the construction of Section 8488, Compiled General Laws of Florida, 1927, reading as follows:

"Whenever a committing magistrate *holds to bail or commits any person* to answer to a criminal charge in a county court, a criminal court of record, or a circuit court, and any information is not filed nor an indictment found against such person, the costs of such committing trial shall not be paid by the county, except the costs for executing the warrant."

It is my opinion that the first inquiry should be answered in the affirmative because the circumstances do not place the case in that class for which the payment of costs is prohibited by said Section 8488.

It is my opinion that the second inquiry should be answered in the negative on the assumption that the defendant in the case was committed. In such cases the Supreme Court in the case of *Barrow vs. State*, 77 Fla. 773, 82 So. 293, held that where no information or indictment is found the committing magistrate is entitled to *no fees* from the county.

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February 15, 1938

COUNTY COURTS—JURISDICTION IN COUNTIES HAVING
CRIMINAL COURT*Dear Sir:*

I am in receipt of your letter of the 26th ultimo, the body of which reads as follows:

"Will you please advise whether the establishment of a Criminal Court of Record in a county has the effect of abolishing a County Court or whether it merely terminates the criminal jurisdiction of the County Court without having any effect on the civil jurisdiction of that Court?"

Your attention is called to Article V, Section 18, of the State Constitution, providing for the Legislature to establish county courts, and providing for civil jurisdiction and for criminal jurisdiction of misdemeanors.

Your attention is also called to Article V, Section 25, which provides that criminal courts shall have jurisdiction of all criminal cases, not capital, which shall arise in the counties.

Your attention is also called to Article V, Section 29, of the State Constitution, which provides that county courts in counties where criminal courts are established, shall have no criminal jurisdiction.

Your attention is also called to Section 8278, Compiled General Laws of Florida, relating to the jurisdiction of county courts in misdemeanors, and providing that county courts shall have no criminal jurisdiction in counties where criminal courts are established.

Under the above provisions of the State Constitution, the civil jurisdiction of county courts are not affected. The only effect of such provisions is to abolish the criminal jurisdiction of county courts in counties where criminal courts are established.

November 9, 1937.

CRIMINAL PROCEDURE—COMMITTING MAGISTRATES FAILING
TO COMMIT PERSONS PLEADING GUILTY—SECTIONS
8328 AND 8436, C.G.L. 1927*Dear Sir:*

I am in receipt of your letter of the 8th instant, the body of which reads as follows:

"In counties in which a criminal court of record is established does the second paragraph of Section 8436, Compiled Gen-

COURTS—MISCELLANEOUS

eral Laws, 1927, require a committing magistrate to bind defendants who plead guilty to the Criminal Court of Record for trial, or may the magistrate in his discretion discharge such defendants. It is noted that in such counties Justices have no criminal trial jurisdiction. It appears from Section 8328, Compiled General Laws, 1927, that the sole duty of the Justice is to determine whether or not there is good ground to hold the accused."

Section 8436, Compiled General Laws of Florida, above mentioned by you, does not relate to the proceedings of the committing magistrate but relates only to trial Courts.

Section 8328, Compiled General Laws of Florida, 1927, relates to examination before the magistrate and reads as follows:

"When the accused shall be arrested and brought before the justice, if the offense be not such as the justice may hear and determine, the justice shall proceed to ascertain whether there is good ground to hold the accused to bail."

Section 8328, above quoted, makes it the duty of the committing magistrate to ascertain whether there is good ground to hold the accused to bail and commit him to the trial Court having jurisdiction. It is conceivable that a person may sometimes plead guilty when in fact he is not guilty, and that the bare fact of pleading guilty without corroborating testimony showing guilt might not be sufficient ground to hold the accused to bail. A committing magistrate would not be justified in discharging an accused pleading guilty and failing to commit him for trial for the sole purpose of securing his fee. On the other hand if the committing magistrate was convinced in his own mind that there was not sufficient ground for holding the accused, notwithstanding his plea of guilty, I think it would be his duty to discharge the accused.

Officers are presumed to do their duty, but the acts of a committing magistrate which arouse suspicion may properly be investigated by the Executive Department.

June 23, 1937.

CRIMINAL PROCEDURE—WITNESS FEES—NOT ALLOWED FROM
OUT-OF-STATE WHEN SERVED IN STATE

Dear Sir:

I am in receipt of your letter of the 17th instant, the body of which reads as follows:

"The grand jury of Polk County on October 14th 1936 returned an indictment charging one George D. Olive with murder

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in the first degree. The case was set for trial January 28th, 1937. Witness subpoenas were issued for all State witnesses and they appeared at the time required. It then developed that the case would not be tried out on that date and all witnesses were placed under recognizance by the Court to appear on February 23rd. The witnesses appeared in compliance with the Court's order but again the Court granted a request for a continuance. It could not be set during the month of March. Because of the fact that the counsel for the Defendant was a member of the Legislature, the trial date was set forward to June 14th, and all witnesses were again placed under recognizance to appear on that date, which they did. The trial has been concluded and the defendant convicted of murder in the second degree.

"Between the dates of February 23rd, and June 14th, one of the witnesses, for business reasons, had to go to the State of Texas. In compliance, however, with the Court's order on February 23rd, he returned to Bartow on June 14th, to appear as a witness for the State.

"The witness was originally served with subpoena at Dundee in Polk County, just a few miles from Bartow. In order to appear at the trial in compliance with the Court's order, he left his business in Texas and came back to Bartow. He insists that he is entitled to more compensation than would be allowed him merely from Dundee to Bartow.

"Kindly advise me what in your opinion under the circumstances would be the allowable compensation, mileage and per diem."

In reply I beg to say that I find no provision in the law for extra pay to a trial witness, who has been served with summons in this State when such witness for business or for other reason departs from and returns to the State for appearance at the trial. I realize the hardship that may exist in the above outlined situation, but I know of no relief therefor other than a legislative relief bill.

April 3, 1937.

CRIMINAL PROCEDURE—WITNESS FEES WHERE WITNESSES ARE
SUMMONED BEFORE SOLICITOR OF THE CRIMINAL
COURT OF RECORD

Dear Sir:

I have your letter of March 29, 1937, in which you enclose a letter from certain attorneys in which they take the position that witnesses

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appearing before the Solicitors of the Criminal Courts of Record should be paid by the State instead of being paid from the Fine and Forfeiture Fund.

These gentlemen, in the letter written to you, state that the effect of the constitutional amendment, Section 10 of the Bill of Rights, is to substitute in certain instances the office of State's Attorney and County Solicitor for that of the Grand Jury. It is true that this amendment permits the State's Attorney to file informations instead of prosecuting on the indictment of the Grand Jury, but prior to this amendment the County Solicitor had such rights under the Constitution.

From an examination of the various acts relating to the establishment of criminal courts of record and the payment of expenses of these court, it is my opinion that witnesses appearing before the Solicitors of the Criminal Courts of Record should be paid from the Fine and Forfeiture Fund. It has been the practice in Criminal Courts of Record of the various counties of the State to pay the witness fees in this manner. It is my opinion, therefore, that it is the proper method of paying these witnesses.

January 7, 1938.

EXTRADITION, BAIL BOND, LIMITATION OF DAYS

Dear Sir:

I am in receipt of your letter of the 3rd instant, the body of which reads as follows:

"Lowell Perrigo gave bond pending application for requisition and hearing before Governor Cone and instead of making the bond read 'ten days' he inserted 'until such requisition is issued and the hearing made before the Governor.' The ten days have passed and I would like to have your opinion as to whether the bond is still good or does it expire under the terms of the statute in such cases made and provided."

With reference to the "ten days" mentioned by you I assume you have reference to Section 8498, Compiled General Laws of Florida, 1927, which provides for the arrest of fugitives from other States and for bringing them before some Judge or Justice, and if upon such examination there is found to be probable cause to justify the detention of the alleged fugitive, he may be committed by the Judge or Justice for a period of time not to exceed ten days to await the warrant for his extradition.

Section 8496 of the same compilation provides that every person arrested as a fugitive shall for a bailable offense have the right to give bond in an amount to be fixed by the County Judge of a County and

COURTS—MISCELLANEOUS

be released from custody thereon pending a hearing before the Governor on the requisition.

The ten days mentioned in Section 8498 relates only to the time that such an arrested fugitive from justice may be committed, and I do not think that the same serves the purpose of limiting the time of a bail bond given under Section 8496 pending a hearing before the Governor on the requisition. In other words, I think the bond mentioned by you in your letter is controlling and is not affected by Section 8498.

April 22, 1937.

JURORS FEES—REQUISITION FOR IN COUNTY COURT

Dear Sir:

I am in receipt of your letter of the 20th instant stating that you are in receipt of a requisition for jurors' fees for a jury called to sit in a civil case involving mechanic's or laborer's lien under Section 5350, Compiled General Laws of Florida, 1927. You make inquiry if the State should pay for jurors in the County Court sitting in such cases.

In reply to your inquiry your attention is called to Section 4473, 4479 and 4480, of the same compilation, relating to requisitions for and in payment of jurors' fees during terms of the Circuit Court, Criminal Court of Record, Civil Court of Record or County Court.

Your attention is also called to Section 4476, relating to pay of jurors in vacation, which provides that the mileage and per diem of jurors in a civil cause before any Court in vacation shall be taxes as costs and paid by the party to the cause as other costs are paid, and before such jury is summoned the party demanding the same may be required by the Court or Judge to deposit an amount sufficient to cover the cost of such jury trial.

Answer to your inquiry would, therefore, rest upon whether or not this particular trial is during a regular term of the County Court. If not during a regular term it would appear that the State is not required to pay for the same.

June 9, 1937.

REGISTRY OF COURT FUNDS—DEPOSIT WITH STATE
TREASURER—CHAPTER 15996, ACTS OF 1933

Dear Sir:

I am in receipt of your letter of the 18th ultimo, referring to Section 15996, Laws of Florida, Acts of 1933, relating to registry of court funds and with specific reference to certain kinds of such funds.

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The last paragraph on page 1 and the first paragraph on page 2 of your letter are as follows:

"These funds are distinguished from ordinary Registry Court Funds in this that these funds are not deposited in Court to ascertain to whom they belong, but are deposited in the Court by Administrators of estates of decedents, who are unable to locate the known heirs or designated beneficiaries, and yet who desire to close up the administration of the estate. Under these circumstances, administrators have deposited specific funds to be held by this Court for specifically named persons.

"It would eliminate book-keeping in this office and would be a saving of time to me and the other County Judges in Florida if we would be protected in depositing these funds with the Treasurer of the State of Florida, as provided in Chapter 15996, Acts of 1933, Registry of Court Funds. However, since the funds are of a different nature from that generally contemplated by the term "Registry of Court Funds," I have not considered it safe to pay them over to the Treasurer of the State of Florida."

You make inquiry if in my view it was contemplated by said Chapter 15996 that the funds which you described should be paid over to the State Treasurer, and if in such event you would be relieved of any personal liability to the representative depositing the funds and to the persons for whom you are holding such funds.

In the case of *Mordt vs. Robinson*, 116 Fla. 544, 156 So. 535, the opinion in which case was rendered by Mr. Justice Davis, we find on page 536 of the Southern Reporter the following note at the bottom of said page:

"A new law, passed after this case arose in the court below, now requires that monies paid into any court and received by the officers thereof shall be forthwith deposited with the State Treasurer of the State of Florida or is a designated depository of funds for the State of Florida. See Chapter 15996, Acts 1933, Gen. Laws."

From the above you will note that Mr. Justice Davis appears to make no exceptions with reference to various funds paid into the registry of the Court.

In view of the language of Section 1 of said Chapter 15996 and the above quoted note by Mr. Justice Davis, I am of the opinion that the funds you mention may be properly paid over to the State Treasurer, in which event you would be relieved from any personal liability to the representative depositing the funds and the persons for whom you have been holding such funds.

CHAPTER V ELECTIONS

SECTION I IN GENERAL

March 9, 1937.

ABSENTEE REGISTRATION CANNOT BE PERFORMED OUTSIDE OF STATE

Dear Sir:

I am in receipt of your letter of this date, the body of which reads as follows:

"I have been confronted with this question. The Supervisors of Registration in some of the larger counties within the State have been asked by the Florida State Society in Washington, D. C., if Deputies can not be sent to Washington to register persons who reside within the respective counties, who are eligible to register, and who, due to official duties, cannot come to the State and appear in person before Supervisor of Registration and register, the Society to pay expenses of Deputies."

"I shall appreciate it if you will advise me on this point."

In reply your attention is called to the decision of our Supreme Court in the case of *State ex rel. Gandy vs. Page*, 169 So. 854. In that case it was held that Chapter 16,987, Laws of Florida, Acts of 1935, providing for absentee registration of electors was unconstitutional. Your attention is called to the following language embraced in said opinion:

"* * * It is contemplated by the Constitution, in the sections and articles hereinbefore cited, that such initial act of sovereignty on the eligible citizen's part shall be performed, like all other acts of state sovereignty, within the territorial jurisdiction of the state wherein registration is to be accomplished."

In view of the holding of the Court in said decision, it is my opinion that the act of registration for elections cannot be performed outside of the State of Florida, even though the Supervisor of Registration or some deputy should go to the City of Washington, District of Columbia, for such purpose.

I fully appreciate the inconvenience in this connection to residents of the State, who may be employed in the City of Washington. This office was requested at the last Legislature to draft a legislative bill relative to this matter, but it was decided, under the ruling of our Supreme Court in the above mentioned case, that no valid Act could be drafted for such purpose.

ELECTIONS IN GENERAL

May 26, 1937.

ABSENTEE VOTERS—ABSENTEE REGISTRATION—CHAPTERS
16,986 AND 16,987 OF 1935*Dear Sir:*

I am in receipt of your letter of the 24th instant referring to absentee election ballots and absentee election registrations under Chapters 16,986 and 16,987, Laws of Florida, Acts of 1935, respectively. You urge the drafting and introduction of a bill or bills which would be constitutional and carry out the purposes of said Act.

In reply I beg to say that Chapter 16,986, Acts of 1935, relating to absentee voting has not been declared invalid by our Supreme Court. The only cases in which said statute has been referred to will be found in 170 Southern Reporter, pages 118, 127, 309 and 472. I assume, therefore, that what you wish is that a new absentee registration bill be drawn to take the place of Chapter 16,987 of 1935 declared invalid in the case of *State ex rel. Gandy vs. Page*, 125 Fla. 348, 169 So. 854. I quote you from the body of the opinion in said case as follows:

"Chapter 16987, Acts 1935, in terms authorizes the act of registration to be performed outside the territorial jurisdiction of the State of Florida, and therefore beyond the ability of the state to enforce against the registrant the sanction of the laws that are required to be passed by the Legislature under Section 9 of Article 6 and under Section 26 of Article 3 of the Constitution to protect the 'purity' of the ballot. Under that act persons outside the constitutional jurisdiction of the State of Florida to sanction oaths and to enforce its criminal laws relating to the act of registration are permitted to perform the act of registration as an 'elector,' which is a sovereign act, absent the contemplated supervision of the state's registration officers.

* * *

"* * * Moreover, the act of registration is a sovereign act because it is the citizen's initial step in the process of acquiring the right to vote, as well as the elector's first step in the act of voting, regardless of whether the voting be done at primary elections or general elections."

"Registration of electors therefore being a sovereign act contemplated to be performed in the acquirement of an official state status, namely, that of a 'qualified elector' under the Constitution of Florida, must be performed within the territorial limits of the state and cannot be authorized to be performed outside the state and beyond the reach of enforcement of its laws required by its Constitution to be passed in order to secure the citizens in their constitutional right to an undefiled suffrage.

* * *

ELECTIONS IN GENERAL

Under the foregoing decision it appears that no absentee registration for elections would be valid under the Constitution, and no bill drafted for such purpose would be effective when passed.

I would be very glad to comply with your request if it seemed possible under the Constitution and decision of our Supreme Court to draw and urge the passage of an effective statute.

I fully appreciate the position of Florida government workers in Washington and regret that there seems to be nothing that can be done to relieve them of personal registration in the State.

October 5, 1938.

BALLOT BOXES—COUNTY COMMISSIONERS TO PREPARE

Dear Sir:

I have your letter of October 4th requesting me by return mail to give you the following information:

"Who is supposed to carry the boxes out to the different voting places in the Primary and General elections, and in special called elections."

You state that you have been doing this at your own expense and that the Board would not pay for same.

In reply, I wish to call your attention to Section 303 of the Compiled General Laws of Florida, 1927, as contained in the Permanent Cumulative Supplement, 1938 Pocket Part of said Laws:

"County Commissioners to prepare ballot boxes.—The County Commissioners (or in case of a municipal election the city or town councilmen), except where voting machines are used, shall cause to be prepared or secured one ballot box for each polling place in their respective counties, of sufficient size to receive and contain all the ballots of the particular precinct or voting place for which it is intended, and it shall be plainly marked or labeled, with the name of the election district or precinct, or number thereof, for which it is intended. Before any general or special election they shall place in said ballot box twice as many official ballots, so printed by them, as there are registered qualified voters in said election precinct, and after securely locking said box, sealing up the keyholes thereof, and all other openings, shall send the key thereof, in a sealed envelope, to the inspector of elections of said election district, together with the box. The custodian shall be placed under oath or affirmation to perform his commission faithfully and impartially, and without favor or prejudice to any political party."

ELECTIONS IN GENERAL

Under this Section, it is clear that the County Commissioners are charged with the duty of providing a proper ballot box and of performing certain duties in connection therewith; also, of sending the key thereof, *in a sealed envelope, to the inspector of elections of said election district, together with the box.*

I believe this sufficiently answers your question. However, may I suggest that you take the matter up with the County Commissioners and the County Attorney with further reference thereto.

April 19, 1938.

FIRE CONTROL UNITS—COUNTY ELECTIONS

Dear Sir:

I am in receipt of your letter of the 18th instant calling attention to Chapter 17,024, Laws of Florida, Acts of 1935, relating to fire control units in counties and particularly to Section 11 of said Act providing for County elections for the establishment or maintenance of fire control units. The said Section provides that "the submission of said question to a vote of the electors may be at any special or general election now provided for by law, and the laws pertaining to and governing such special or general elections shall govern the referendum election to be held."

You make inquiry as to whether any of the Primary elections are lawful for the purpose of voting on the above question.

In reply I beg to say in my opinion the special or general elections mentioned in the above quotation from Section 11 do not refer to Primary elections. In Primary elections only the voters of a particular political party or parties take part therein, and the law doubtless contemplates that all qualified voters of the County should be given an opportunity to vote in such referendum elections.

Note also the provision in the above quotation that "the laws pertaining to and governing such special or general elections shall govern the referendum election to be held." The Primary election laws are different in many respects from the General election laws.

December 6, 1937.

POLL TAX—NOT PREREQUISITE TO VOTE UNDER CHAPTER 18061, ACTS 1937

Dear Sir:

I am in receipt of your letter of the 4th instant making inquiry with reference to an Act of the last legislature providing for exemption from the payment of poll taxes as a prerequisite to vote and making

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particular inquiry as to whether the said Act changes the law with reference to registration for elections.

In reply I beg to say Chapter 18,061, Laws of Florida, Acts of 1937, relates only to the payment of poll taxes and does not in any way affect the statutes pertaining to registration of electors. For your convenience I am pleased to hand you herewith two copies of said Act which I secured from the office of the Secretary of State.

You will note that this statute provides that the payment of a poll tax shall not be required of any person otherwise qualified to vote at any Primary, Special, General or other election hereafter held in this State under the Constitution or any statutes passed in pursuance thereof. You will also note under the terms of the Act the same becomes effective on January 1, 1938.

December 11, 1937.

**RE-REGISTRATION OF VOTERS IN SANTA ROSA COUNTY—
SECTION 269, C.G.L. 1927**

Dear Sir:

I am in receipt of your letter of the 29th ultimo, making inquiry if the registration list in Santa Rosa County will be valid in the coming election without a re-registration of voters of said county under the provisions of Section 269, Compiled General Laws, 1927. You state in your letter that for the election in 1936 you made out a complete set of new books and it is desired to put off a re-registration until 1940.

Section 269, Compiled General Laws, 1927, originally Section 1 of Chapter 12,452, Laws of Florida, Acts of 1927, is an Act providing that in all counties of this State having a population of not less than 15,500 and not more than 16,000, according to the last State Census, the County Commissioners shall provide for a re-registration of all voters of such counties who intend to vote and qualify for voting in any General or Primary election to be held in the year A. D. 1928, or subsequent years thereafter, and specifies certain duties for the Supervisor of Registration in connection therewith.

The only counties to which this Act applied under the State Census of 1925 were Columbia and Madison Counties. These counties have grown out of the brackets of population stated in said Act and Santa Rosa County is the only county now coming within said brackets.

Answer to your inquiry is dependent upon the construction of the words "according to the last State Census" contained in said statute. Our Supreme Court in the case of *State vs. Daniels*, 87 Fla. 270, 99 So. 804, in construing a similar provision in Chapter 9274, Acts of 1923, used the following language: "The provision 'according to the last Federal

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Census' is progressive and has reference to each Federal Census as it occurs." On the basis of this decision it appears that said Section 269 applies to Santa Rosa County under the Census of 1935 and that in order for the election of next year in said county to be legal the provisions of the statute requiring a re-registration of voters must be complied with.

This opinion is given without passing upon the constitutional validity of said Section 269, Compiled General Laws of Florida, 1927, since under the rulings of our Supreme Court administrative officers must administer the laws as they find them unless declared invalid by a proper judicial tribunal.

September 14, 1938.

REGISTRATION BOOKS—BLANKS, ETC.—COST OF PRINTING TO
BE PAID FROM ANY ITEM IN APPROPRIATION ACT RELATING
TO EXPENSE OF HOLDING AND CONDUCTING ELECTIONS

Dear Sir:

In your letter of the 12th instant you call attention to the provisions of Section 285, Compiled General Laws, making it the duty of the Secretary of State to cause to be printed sufficient registration books, blank oaths of registration and other blanks required to be used in connection with the holding of general elections, and of Section 286, making it your duty to furnish such supplies upon the requisition of the county commissioners of any county.

You state that heretofore the cost of such printing and the preparation of such books and blanks has been paid out of an item in the General Appropriation bill designated as "General Printing and Advertising." You also call attention to the fact that the Legislature of 1937 omitted from the General Appropriation Bill the item "General Printing and Advertising."

You thereupon request my advice as to whether you should proceed with the preparation of the necessary registration books and blanks as required by Section 285, Compiled General Laws, and if so, against what appropriation or fund the cost incident thereto should be approved for payment.

The holding of a general election in each county of this State on the first Tuesday after the first Monday in November each and every even-numbered year, is mandatorily required by Section 9 of Article XVIII of the Constitution of Florida.

The provision of what is now Section 285 of the Compiled General Laws of Florida, 1927, in respect to the duty of the Secretary of State to cause to be prepared a sufficient number of registration books, blank

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oaths for registration, certificates of registration, applications for renewal of certificates, certificates of transfer, and other blanks required to be used under the general election law, was originally enacted as a part of Section 13 of Chapter 4328, Laws of Florida, of the General Acts of 1895, and that requirement and duty has, ever since the effective date of said Chapter 4328, existed and does now exist, and devolve upon you as Secretary of State, and is mandatory in character.

In the enactment of Chapter 4328, Acts of 1895, no specific provision was made for paying the cost of preparation of the books and blanks required to be used under said law. Obviously, however, the Legislature recognized such cost to be a legitimate State obligation and intended that same should be paid.

You advise that the payment of such cost from the item, "General Printing and Advertising" in the biennial General Appropriation bills has been a practice of long standing. Of such practice the Legislature is presumed to have been aware at the time of the enactment of the successive General Appropriation bills, and this in my opinion amounts to a legislatively established policy for the payment of the cost incident to the duty imposed upon the Secretary of State by the provisions of Section 13 of Chapter 4328, Acts of 1895, now Section 285, Compiled General Laws, from such appropriation.

The failure of the Legislature in the Session of 1937 to include in the General Appropriation bill an item "General Printing and Advertising," does not indicate a legislative intent that the cost of printing the books and blanks required by Section 285, Compiled General Laws, should not be paid, but it is fair to assume that it was intended that such cost should be paid from some item included in the 1937 Appropriation Act, since it was the duty of the Legislature to make provision for the payment of the State's obligations in connection with the duty imposed by Section 285, Compiled General Laws, and in law it is presumed that the Legislature intended to and did perform its duty in that respect.

Your duty under Section 285, Compiled General Laws, is mandatorily required in the public interest in respect to hold general elections as required under the Constitution, and it is my opinion that the cost of having prepared a sufficient number of registration books, blank oaths for registration, certificates of registration, applications for renewal of certificates, certificates of transfer and other blanks required to be used under the general election law, may and should be paid from any item in the General Appropriation Act of 1937 relating to the expense of holding and conducting elections.

There is an item in the Appropriation Act of 1937 under the heading, "Office of Secretary of State" for expense of printing general election notices. If there is a surplus in this fund, the same may be applied to the payment or toward the payment of the cost incurred by you under

ELECTIONS IN GENERAL

Section 285, Compiled General Laws. There is also an item under the heading "Miscellaneous" for primary elections. If there is a surplus in this fund, such surplus may also, if necessary, be used toward the payment of the cost incurred by you under Section 285, Compiled General Law.

December 19, 1938.

SUFFICIENCY OF WRITE-IN VOTES TO ELECT

Dear Sir:

This will acknowledge receipt of your letter of December 13th with copy of a letter attached from the Secretary of State, giving the list of persons voted for November 8th for Justice of the Peace and Constable in districts in Bay County, which votes were written in the ballots on November 8th, 1938. You state that the parties receiving these scattered votes claim they are entitled to commissions and you request me to advise you whether or not you should issue commissions as result of said write-ins. You state further that it does not appear to you that there has been sufficient expression of the people as to the results of said election and call my attention to a case from Putnam County that was decided by our Supreme Court.

I have examined the case that you referred to, which is State ex rel. Davis, Atty. Gen., vs. Howell, 132 So. 647. The Court held:

"The incumbent sheriff died October 24, 1930, and the general election was held under the Constitution November 4, 1930. There being a vacancy in the elective office of sheriff of the county, the Constitution required a sheriff to be elected at the general election. If the death of the sheriff occurred so near the election that under the statute the proper officers could not have had an appropriate space on the election ballots prepared for votes for sheriff, this did not deprive the voters of the right under the Constitution to vote for a sheriff for the unexpired term, and they could do so by appropriately writing the office and a name on the ballots and making a proper X-mark thereon.

"A sheriff was not voted for in all the election districts of the county, but a sheriff was voted for in sixteen of the twenty-six election districts, and the vote cast was a substantial one considering the entire vote cast."

I am of the opinion that your construction of this case is correct and although the Court held that the election in that case was valid, it did so on the basis that the vote cast was "a substantial one considering the entire vote cast."

Our Supreme Court had previously in an advisory opinion to the Governor, 111 So. 252, indicated that this was the correct rule to follow

ELECTIONS IN GENERAL

in matters of this kind and I find this to be supported by the authorities. See Mechem on Public Offices and Officers, at pages 108, 109, Paragraph 174, where it is said:

"... an election to fill a vacancy of which no notice was given, and which was in fact known to but few of the voters, is void. But though the official notice was not given, or, if given, not in the prescribed form, yet if the election has been held, and the great body of the voters had notice in fact of the vacancy, this, coupled with the fact that they are presumed to know that the law requires the vacancy to be filled at the next election, is sufficient. . ."

I, therefore, am of the opinion that if there existed a vacancy in the office of Justice of the Peace and Constable for the districts mentioned and there was no candidate who had properly had his name placed upon the ballot, and that if the votes cast for the write-in candidates were not a substantial number of votes in comparison to the total votes cast in those respective districts for candidates for other offices, that you should not issue a commission but should hold the matter in obedience and leave the parties to seek their redress in the courts.

January 29, 1938.

WHEN REGISTRATION BOOKS OPEN—APPLICANT FOR
REGISTRATION SIGNING NAME—PLACING GUM
STRIP OVER AFFILIATION STATEMENT—
CHAPTER 17899 AND 18128 OF 1937

Dear Sir:

I am in receipt of your letter of the 5th instant, referring to Chapters 18128 and 17899, Acts of 1937, both of which you state apply to your county, and you make inquiry as to which should control with reference to opening and closing dates for the registration books when sent out to the districts and when registration is made in your office.

Since both of these statutes were enacted at the same session of the Legislature, it is my opinion that they should be considered together as far as possible.

Chapter 17899 provides for the books in the districts to open on the first Monday in March and to be kept open through April 1st; while Chapter 18128 provides that the district books shall be opened on March 1st and be kept open through March 31st. Assuming that the law favors the greatest length of time for applicants to register, I would suggest that it would be well to open and close the books in the precincts according to Chapter 18128, which is from and including March 1st to

ELECTIONS IN GENERAL

March 31st. On the same theory I believe it would be well for books to be opened in your office on April 1st and be kept open through May 1st.

You again refer to Section 1 of said Chapter 18128 relative to the requirement that the Supervisor of Registration shall paste a gummed strip over the column in which party affiliation is designated. In reply to your inquiry, I beg to say that the same appears to apply only to registrations for the general election, and not to registrations for the primary election.

You again refer to the provisions of Chapter 18128 relating to the use of the same books used for primary registration and continuing registration for general election in such books. You make specific inquiry if it is necessary to have a voter sign his name in registering for the General Election. Under paragraph 13 of Section 275, Compiled General Laws of Florida, 1927, a person registering for primary elections is required to sign his name, but I find no statute requiring the applicant for registration in the General Elections to sign his name to the registration book, though all applicants for registration, whether Primary or General, are required to sign an affidavit under the provisions of Article 6, Section 3, of the State Constitution.

You further state that you are using voting machines in your county for the first time this year, and you make inquiry as to whether or not the inspectors of election shall consolidate for the votes of the three machines used in one precinct into one tabulation. This would seem necessary in order to arrive at a total for such precinct. But I think it would be well to itemize the numbers from the three machines making up such total.

SECTION 2

ELECTIONS—PRIMARY

September 8, 1938.

CHAPTER 17,897, ACTS 1937, SECTION 2, PROVIDES FOR CALLING SPECIAL PRIMARY ELECTION

Gentlemen:

By letter dated September 6th, 1938, Honorable R. R. Saunders, your Attorney, states that in 1936 one H. G. LaBree of Dania, Florida, was elected a member of the Broward County Port Authority and that in the Democratic Primary Election held this year, he was nominated as a Democratic nominee for the term beginning the first Tuesday after the first Monday in January, A. D. 1939. It is also stated that Mr. LaBree, the nominee, died August 27th, 1938, which was between the Primary Election at which he was nominated and the ensuing General Election to be held in November of 1938. Mr. Saunders thereupon requests, for you, my opinion as to the procedure for filling the vacancy in nomination caused by the death of Mr. LaBree; that is, the nomination for election to the term beginning the first Tuesday after the first Monday in January, 1939.

Section 1 of Article 10 of Chapter 17,506, Laws of Florida, Special Acts of 1935, as amended by Article 5 of Chapter 18,442, Laws of Florida, Special Acts of 1937, provides for the calling and holding of special primaries and special elections to fill vacancies in the office of Port Commissioner but there is no provision in either of said Acts for the calling and holding of a special primary to fill a vacancy in nomination election so called and held, a second primary election shall be held within ten days thereafter. After the said special primary election is called by the County Executive Committee as provided in Section 2 of Chapter 17,897, Acts of 1937, the said special primary election or elections shall in all respects be held and conducted according to the applicable provisions of the General Primary Election Laws of Florida.

October 21, 1937.

OPENING AND CLOSING REGISTRATION BOOKS—SECTIONS 363 AND 369, C.G.L. OF 1927—CHAPTER 17,897 OF 1937

Dear Sir:

Chapter 17,897, Laws of Florida, Acts of 1937, providing for a change in dates of Primary elections, contains no provision with reference to opening and closing the registration books. Sections 363 and 369, Compiled General Laws of Florida, 1927, fixing the dates for the opening and closing of registration books for Primary elections appear to continue in force and effect notwithstanding the change in Primary dates, above mentioned.

ELECTIONS—PRIMARY

I realize the inconvenience to the various Supervisors of Registration of the State, but in order for the Primary elections to be legal the statutes relating to such elections must be complied with.

January 7, 1938.

**PRIMARY CALL FOR NOMINATION IN CASE OF VACANCY—
QUALIFICATION OF OFFICER AFTER ELECTION**

Dear Sir:

I am in receipt of your letter of the 4th instant calling attention to a vacancy in the office of the Clerk of the Circuit Court of Pinellas County by reason of the death of the former incumbent, Hon. A. G. McQuaggs. You make inquiry as to whether his successor that may be elected in the General Election in the fall of 1938 may qualify immediately or will have to wait until January of 1939.

In reply to your inquiry I beg to say whoever may be elected in the General Election for the unexpired term may proceed to qualify immediately and not have to wait until January.

You make further inquiry as to how a Primary should be called to select a nominee for said County position.

Section 9 of Article XVIII of the State Constitution provides that a General Election shall be held in each County in this State on the first Tuesday after the first Monday in November A. D. 1898, and every two years thereafter for elective State and County Officers whose terms of office about to expire or for any elective office that shall have become vacant. Under this provision of the Constitution the County Commissioners will take care of elections for vacancies in the General Election.

Section 359, Compiled General Laws of Florida, 1927, as amended by Chapter 17,897, Acts of 1937, changes the date of the first Primary election. Section 411, Compiled General Laws of Florida, 1927, as amended by Chapter 17,897, Laws of Florida, Acts of 1937, provides that if no nomination is made in the first Primary there shall be held a second Primary election on the fourth Tuesday after the first Monday in May of every year in which a General Election is held for the nomination of all candidates for all political parties for State and County offices.

I find no specific statutory authority for calling a Primary by the party Executive Committee but the holding of the Primary is provided for by statute. However, Section 361, Compiled General Laws of Florida, 1936 Supplement, provides that each Committee and its officers shall have the powers usually exercised by such committees and by the officers thereof not inconsistent with the provisions of the Article relating to Primary elections. I see no objection to a resolution by the County

ELECTIONS—PRIMARY

Democratic Executive Committee with reference to placing in the Primary for nomination candidates for the unexpired term caused by such vacancy. If candidates run for such unexpired term in the Primary and the successful Primary candidate is elected in the General Election for such unexpired term, he may qualify for such unexpired term immediately upon election.

January 29, 1938.

POLL TAX NOT REQUIRED UNDER CHAPTER 18061, ACTS OF 1937

Dear Sir:

I am in receipt of your letter of the 27th instant, making inquiry if it will be necessary for voters to pay poll tax for 1937, in order to vote in the May primary of 1938.

In reply, I beg to say that under the provisions of Chapter 18061, Laws of Florida, Acts of 1937, effective on January 1, 1938, the payment of a poll tax is not required of any person otherwise qualified as an elector to vote in any primary, special, general or other election held in this State. In other words, it does not appear that an elector in order to vote in 1938 is required to hold a poll tax receipt for any year.

January 7, 1938.

REGISTRATION—PERSONS WHO CANNOT WRITE

Dear Sir:

I am in receipt of your letter of the 20th ultimo, making inquiry with reference to persons registering the vote in Primary elections when they are not able to write. Article VI, Section 3, of the State Constitution reads as follows:

"Every elector shall at the time of his registration take and subscribe to the following oath: 'I do solemnly swear or affirm that I will protect and defend the Constitution of the United States and of the State of Florida, that I am twenty-one years of age, and have been a resident of the State of Florida for twelve months and of this county for six months, and I am qualified to vote under the Constitution and laws of the State of Florida.'"

Section 375, Compiled General Laws of Florida, 1927, requires electors which appear in person for registration and make oath to certain facts and after such oath sign his name in the presence of the Supervisor of Registration in the general register. It also provides if such person declares that he is unable to mark his ballot or sign his name, he shall state why and the Supervisor of Registration shall enter upon

ELECTIONS—PRIMARY

the register the reasons. It also provides that if the inability of such person to sign is apparent owing to some physical infirmity, such as blindness or loss of limb incapacitating him from writing, he shall so state the fact; but if the disability is because of the illiteracy of such person, the Supervisor of Registration shall in addition to entering that fact enter also a full description of such person as is possible, giving his height, approximate weight, color, complexion and color of eyes.

Honorable Fred H. Davis, former Attorney General, wrote an opinion under date of April 9, 1928 with reference to Section 318, Revised General Statutes of Florida, 1920, now Section 375, Compiled General Laws of Florida, 1927, above mentioned, which appears on page 412 of the Biennial Report of the Attorney General for the years 1927-1928. One paragraph of said letter reads as follows:

"It will be noted that the obvious purpose of requiring the voter to appear in person before the registration officers and in requiring him to personally sign his name to the registration books, if he is able to write, is to enable the election officials to identify such person in the event such a question arises as to the identity at the polls."

In view of the premises I beg to say in my opinion a person is not prohibited from registering for a Primary election on account of not being able to write.

SECTION 3

ELECTIONS—SPECIAL

July 1, 1938.

SPECIAL TAX SCHOOL DISTRICT BONDS—REGISTRATION BOOKS
TO BE KEPT OPEN 5 DAYS PRIOR TO ELECTION UNDER
CHAPTER 14715, ACTS 1931, NO REQUIREMENT IS MADE
UNDER SECTIONS 720-726 C.G.L. FOR KEEPING
REGISTRATION BOOKS OPEN

Dear Sir:

I am in receipt of your letter of the 30th ultimo enclosing copies of telegrams between your office and Honorable Nevin Perkins, Supervisor of Registration, Ocala, Florida, relating to keeping registration books open for a special tax school district bond election. Reference is made to Chapter 14715, Laws of Florida, Acts of 1931, which is an act to prescribe the manner by which elections may be called and held for the approval of the issuance of bonds by counties, districts and municipalities of the State of Florida in compliance with Section 6, of Article 9 of the State Constitution as amended. Said Act, Section 3, provides that for such election, electors may be registered but no electors shall be registered within less than five days prior to the date of holding of any such elections.

If such election is called and held under said Act, it would appear necessary for the registration books to be kept open until five days preceding such election, but if such election is called and held under the provisions of Sections 720 to 726, Compiled General Laws of Florida, 1927, passed in pursuance of Section 17 of Article 12 of the State Constitution relating to such district bond elections, it does not appear that it is necessary for the registration books to be kept open since said Sections 720 to 726 do not appear to require the keeping of registration books open for registration of electors in such elections.

This view is based on the holding of our Supreme Court in the case of *State ex rel. Evans et al. vs. Barker, et al.*, 124 Fla. 359, 168 So. 534, from the body of which I quote you as follows:

"While proceedings for the calling of elections to authorize the issuance of special tax school district bonds pursuant to Section 17 of Article 12 of the Constitution may be called and lawfully conducted under Chapter 14715, Acts 1931, which is an additional and supplementary general statute setting up the election machinery for issuance of any kind of "bond" that is required to be voted for under amended Section 6 of Article 9 of the Constitution before being issued, that Chapter is not exclusive of other general or special statutory provisions authorizing the calling and holding of bond elections, and the de-

ELECTIONS—SPECIAL

claration of the result thereof in such manner as to evidence compliance with said amended Section 6 of Article 9.

"Therefore a special tax school district bond election called and held in accordance with Sections 720-726, C.G.L., Sections 579-585, R.G.S., is a valid method of securing the expression of the freeholder electors of a special tax school district with reference to issuance of bonds under authority of Section 17 of Article 12, although Chapter 14715, Acts 1931, is likewise applicable and may be followed at the option of the school authorities with respect to the election condition precedent essential to the issuance of special tax school district bonds in accordance with organic limitations as to the procedure therefor."

February 18, 1937.

SPECIAL TAX SCHOOL DISTRICT ELIGIBILITY TO VOTE

Dear Sir:

This is in reply to your request for my opinion as to whether or not all qualified voters residing within a special tax school district are entitled to vote if they have property, real or personal, merely assessed to them on the current tax rolls, regardless of whether or not they have actually paid any taxes. The following is Section 707 (1) Compiled General Laws of Florida, Supplement:

"Qualification of voters.—All voters residing within any special tax school district in the State of Florida, who paid a tax on real or personal property and voted in the general election next preceding the date of holding any election pertaining to such special tax school district, shall hereafter be entitled to vote in such last mentioned election. (Ch. 16013, Acts 1933, *1.)"

Under date of July 26, 1934, I rendered an opinion reported on page 367 of the Biennial Report of the Attorney General, 1933-34, in which I said the following:

"Answering your letter of July twenty-fourth, I beg to say that only persons paying a tax on real or personal property are eligible to vote in a special tax school district election. The payment of such tax by a husband on property owned by him does not entitle the wife to vote. If the election is to be held for the issuance of bonds, only freeholders are eligible to vote."

In determining just which taxes should be paid as a prerequisite to voting, we must consider Section 706, Compiled General Laws of Florida, 1927, which reads as follows:

"ELECTION.—All special tax school district elections shall be held and conducted in the manner prescribed by law for hold-

ELECTIONS—SPECIAL

ing general elections, except as provided in this Article, and it is hereby made the duty of the supervisor of registration of any county, to furnish upon payment for such service to the county board of public instruction, on demand, a certified list of the qualified voters residing in a special tax school district, or the territory to be created into a special tax school district, that have paid a tax on personal or real property for the year next preceding any such special tax election. (Id. *6)."

The Constitution of the State does not require a person to pay the taxes on all of his property before he is entitled to vote. He must simply pay a tax on some real or personal property for the year next preceding the election.

February 1, 1937.

SPECIAL TAX SCHOOL DISTRICT POLL TAX PREREQUISITE
TO VOTE

Dear Sir:

Replying to your favor of January 27th., in which you propound the following question, to-wit:

"Besides being a freeholder, does a person to be entitled to vote in a Special School Tax District Bond Election, to be held February 13th., A. D. 1937, have to pay his poll tax for the year A. D. 1937?"

Permit me to say, Chapter 16013, Acts of 1933, reads as follows, to-wit:

"Section 1. That all voters residing within any Special Tax School District in the State of Florida who paid a tax on real or personal property and voted in the General Election next preceding the date of holding any election pertaining to such Special Tax School District shall hereafter be entitled to vote in such last mentioned election."

You will observe that the statute above quoted appears to be particularly applicable to Special Tax School District Elections held for the purpose of electing Trustees and fixing millage; however, Section 723 of the Compiled General Laws provides that in an election on the question of whether or not bonds shall be issued that "only the duly qualified electors who are freeholders shall vote."

To be a qualified elector a person must have, unless exempt from the payment of poll taxes, paid his poll taxes for the two years next preced-

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ing the year in which an election is held. Therefore, it seems to me that all those persons who reside within a precinct located in the Special Tax School District who are freeholders and who have paid their poll taxes for the two years next preceding the year 1937, the year in which your election is to be held, should be considered qualified electors; however, any person who was not qualified to vote in the last preceding General Election, and who may be otherwise qualified to vote in the Special Tax School District election to be held February 13th. A. D. 1937, unless exempt from the payment thereof, should pay their poll taxes for 1935 and 1936.

SECTION 4
ELECTIONS—WET AND DRY

June 8, 1937.

PUBLICATION OF NOTICE

Dear Sir:

Answering your letter of the 3rd inst., making inquiry as to what statute controls with reference to publication of notice of wet and dry elections, I refer you to Section 4151 (196), Compiled General Laws of Florida, 1936 Supplement, which requires that at least thirty days' notice of such election shall be made by publishing the same in one newspaper in each and every town in said county, if a newspaper or newspapers shall be published in said county, and if none, then by posting at least ten written notices of said election in the most public places in said county, one of which shall be at the courthouse.

May 21, 1937.

RETURNS TO BE CANVASSED BY CANVASSING BOARD

Dear Sir:

I have your letter of the 12th instant with reference to a wet and dry election held in your County and making inquiry if the same should be canvassed by the Board of County Commissioners or the Supervisor of Registration, County Judge and Chairman of the Board of County Commissioners.

In reply your attention is called to Section 1 of Article XIX of the State Constitution, as amended, which provides that an election to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited shall be conducted in the manner prescribed by law for holding General Elections.

Your attention is further called to Section 343, Compiled General Laws of Florida, 1927, relating to General Elections and providing that the County Judge, the Supervisor of Registration and the Chairman or some other members of the Board of County Commissioners shall constitute and be the County Canvassing Board of Elections.

It is, therefore, my opinion that the wet and dry election in your county may properly be canvassed by the Canvassing Board provided for in Section 343.

CHAPTER VI

INSURANCE AND SURETIES

ANNUITY CONTRACTS DO NOT CONSTITUTE

Dear Sir:

This is in reply to your letter of March 26th enclosing copy of letter from Messrs. Crawford and May, Attorneys, of Jacksonville, Florida.

You state that a religious organization proposes to invite the deposit with it of sums of money and upon deposit will thereafter pay to the depositor an annual income at a fixed rate which is lower than that available through commercial annuity organizations. The plan further contemplates the gift of a special portion of the corpus of the deposit to the religious organization. You request my opinion as to whether or not this constitutes engaging in the insurance business within the scope of the insurance laws of the State.

Such a contract as this organization proposes to issue is not essentially different from annuity contracts issued by many of the life insurance companies. The fact, however, that such contracts are usually written by life insurance companies does not of itself render it an insurance contract. This question was considered by the United States Circuit Court of Appeals of the Tenth Circuit in the case of *Rishel vs. Pacific Mutual Life Insurance Company of California*, 78 Fed. Reporter (2nd Series), 881. That was a suit to cancel certain annuity contracts entered into by an old lady just before she died. Those seeking to cancel the contracts called attention to the fact that the law of Colorado required copies of all insurance contracts to be filed with the insurance commissioner and that copies of these annuity contracts were not so filed. The Court said:

"It is very doubtful whether annuity contracts are insurance policies within the meaning of this section. Respectable courts have held they were not. *Hall vs. Metropolitan Life Ins. Co.*, 146 Or. 32, 28 P. (2d) 875, where the contention made here was denied; *Carroll vs. Equitable Life Assur. Soc. (D.C.)* 9 F. Supp. 223; *People vs. Knapp*, 193 App. Div. 413, 184 N. Y. S. 345, affirmed 231 N. Y. 630, 132 N. E. 916; *Commonwealth vs. Metropolitan Life Ins. Co.*, 254 Pa. 510, 98 A. 1072. Until the Colorado Supreme Court so rules, we are not prepared to hold that an annuity contract is an insurance policy as used in this statute. In many respects it is the exact converse, and in common parlance the word insurance does not embrace annuities."

It is, therefore, my opinion that this religious organization would not come within the scope of the insurance laws in writing such annuity contracts.

INSURANCE AND SURETIES

November 17, 1938.

FRATERNAL BENEFIT INSURANCE—LAWS REGULATING—NECESSITY OF MEDICAL EXAMINATION—CHAPTER 17947, ACTS OF 1937 AND SECTION 6406, COMPILED GENERAL LAWS

Dear Sir:

I have been requested to review an opinion of the Attorney General dated March 22, 1938, entitled as above. Pursuant to such request I have reviewed that opinion.

The one and only question to be determined is whether or not the enactment of Chapter 17947, Laws of Florida, 1937, had the effect of dispensing with the medical examination provided for in Section 6405, Compiled General Laws (Section 4441 R.G.S.) in view of the fact that Section 6406 Compiled General Laws (Section 4442 R.G.S.) was not amended in any respect. In the interest of clearness, it should be stated that Chapter 17947 was

"AN ACT to amend Section 4441, Revised General Statutes of Florida, 1920, same being Section 6405 of the Compiled General Laws of Florida, 1927, relating to Fraternal Benefit Societies."

Before the enactment of said Chapter 17947, Section 6405, Compiled General Laws (Section 4441 R.G.S.) read as follows:

"Any society may admit to beneficial membership any person not less than sixteen and not more than sixty years of age, *who has been examined by a legally qualified physician, and whose examination has been supervised and approved in accordance with the laws of the society*; Provided, that any beneficiary member of such society who shall apply for a certificate providing for disability benefits, need not be required to pass an additional medical examination therefor. Nothing herein contained shall prevent such society from accepting general or social members. (Id. § 7.)" (Italics ours.)

Section 1 of Chapter 17947, which amends the Section last hereinabove quoted, reads as follows:

"That Section 4441 Revised General Statutes of Florida, 1920, the same being Section 6405 of sub-chapter IX of the Compiled General Laws of Florida of 1927 is hereby amended to read as follows: Any fraternal benefit society which shall accumulate and maintain required reserves on all its certificates in conformity with the statutes relating to fraternal benefit societies, may accept members of such ages and children under sixteen years of age, in such manner and upon such showing

INSURANCE AND SURETIES

of eligibility and issue to its members and children under sixteen years of age, such forms of certificates, payable to such beneficiaries, as its constitution and by-laws may provide. Children under sixteen years of age shall have no voice or vote in the management of the society. Societies not qualified or which do not hereafter qualify for operation of an adult department may qualify for the operation of a Juvenile department in accordance with the provisions for qualifying in the adult field. Any fraternal benefit society now operating in this State or that may hereafter seek admission to do business in this State may issue benefit certificates to its members in accordance with its laws providing for the establishment of its membership into divisions and classes of the same age and entry, and may provide in its laws and certificates for the payments of benefits from special funds created for such purposes to the oldest membership of a division and class upon the death of a member in the same division and class."

If Section 6405 Compiled General Laws (Section 4441 R.G.S.) were the only provision of the fraternal benefit law relating to medical examination, the conclusion would be inescapable that Chapter 17947 dispensed with such requirement. The former opinion of the Attorney General, to which reference is hereinabove made, stated the conclusion that medical examinations are still required by reason of the fact that reference is made thereto in the following section, to-wit: Section 6406 Compiled General Laws (Section 4442 R.G.S.) That Section reads as follows:

"Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or, if a voluntary association, the articles of association, the constitution and laws of the society and the *application for membership and medical examination*, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof, and any changes, additions or amendments to said charter or articles of incorporation, or articles of association, if a voluntary association constitution or laws duly made or enacted subsequent to the issuance of the benefit certificates shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership. (Id. § 8.)" (Italics ours.)

INSURANCE AND SURETIES

The reference in Section 6406, Compiled General Laws (Section 4442 R.G.S.) to a medical examination does not set forth a requirement that there must be such a medical examination. It merely provides that the application for a medical examination shall constitute a part of the contract of insurance, and its force is dependent entirely upon the positive requirement for a medical examination, which had, prior to the enactment of the 1937 Statute, been embodied in Section 6405, Compiled General Laws. A provision that an application for a medical examination shall constitute a part of the contract of insurance does not amount to a mandatory requirement that there should be a medical examination, particularly in view of the circumstance that such a mandatory requirement contained in another section of the same law has been eliminated by the Legislature.

Upon reviewing the opinion of March 22nd, 1938, I am inclined to feel that the better view is that since the enactment of Chapter 17947, medical examinations are no longer required to be made of applicants for insurance in fraternal benefit societies under the Laws of the State of Florida. The opinion of March 22nd, 1938, hereinabove referred to, is therefore overruled.

July 17, 1937.

FRATERNAL BENEFIT SOCIETIES—CHAPTER 17947, ACTS 1937

Dear Sir:

This is in reply to your letter of June 17th requesting my opinion concerning Chapter 17947, enacted at the 1937 session of the Legislature. For the sake of clearness I set forth to begin with the title of said Chapter 17947, which reads as follows:

"AN ACT TO AMEND SECTION 4441 REVISED GENERAL STATUTES OF FLORIDA, 1920, SAME BEING SECTION 6405 OF THE COMPILED GENERAL LAWS OF FLORIDA, 1927, RELATING TO FRATERNAL BENEFIT SOCIETIES."

As indicated by the title, the Act amended Section 4441, Revised General Statutes of Florida, 1920, the same being Section 6405, Compiled General Laws of Florida, 1927. This Section as amended reads as follows:

"Any fraternal benefit society which shall accumulate and maintain required reserves on all its certificates in conformity with the statutes relating to fraternal benefit societies, may accept members of such ages and children under sixteen years of age, in such manner and upon such showing of eligibility and issue to its members and children under sixteen years of age, such forms of certificates, payable to such beneficiaries, as its

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constitution and by-laws may provide. Children under sixteen years of age shall have no voice or vote in the management of the society. Societies not qualified or which do not hereafter qualify for operation of an adult department may qualify for the operation of a Juvenile department in accordance with the provisions for qualifying in the adult field. Any fraternal benefit society now operating in this State or that may hereafter seek admission to do business in this State may issue benefit certificates to its members in accordance with its laws providing for the establishment of its membership into divisions and classes of the same age and entry, *and may provide in its laws and certificates for the payment of benefits from special funds created for such purposes to the oldest membership of a division and class upon the death of a member in the same division and class.*" (Italics ours.)

The portion of the Act which we have italicized above authorities what has been referred to as a "contingent endowment policy." This would provide for the division of the membership into classes of members and the person holding the oldest certificate in the class would be paid the face amount thereof upon the death of any member of the class. The plan contemplates that the person applying for a certificate will not know his ranking in the particular class until the certificate is issued bearing his number and classification and that he will be given no information concerning the identity of other members of his particular class. Such a certificate would, in my opinion, constitute a wagering contract. The following is from Volume 6, Ruling Case Law, page 779:

"A bet or wager is ordinarily an agreement between two or more, that a sum of money or some valuable thing, in contributing which all agreeing take part, shall become the property of one or some of them, on the happening in the future of an event at the present uncertain; and the stake is the money or thing thus put upon the chance."

The so-called "contingent endowment" feature of the policy is definitely not insurance because the holder of the oldest certificate in the class has no insurable interest in the contingency which accelerates the payment to him of the face of his policy.

While it is my opinion that the so-called "contingent endowment" feature of the policy is nothing more or less than gambling, the statute authorizing it would not be unconstitutional for that reason. Article III, Section 23 of the Florida Constitution prohibits lotteries but every form of gambling does not necessarily constitute a lottery. The Legislature has the right to regulate and legalize certain forms of gambling, so long as they do not take on the proportions of a lottery. See Lee

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vs. City of Miami, 163 So. 486. The language of Chapter 17947 which we have hereinabove italicized evidences the legislative intent to legalize this form of gambling.

Chapter 17947 provides that the amounts payable to the oldest membership of a division and class upon the death of a member in the same division and class shall be payable from "special funds created for such purposes." The policy should have clearly and unmistakably stated on its face the amount of the premium which goes into such special funds, for such amount is the separable portion of the entire premium which constitutes the amount wagered. If the oldest certificate holder should die before any other member of the class he has lost his bet. While it is true that his beneficiaries are paid the amount of his policy, the separable amounts he has paid over possibly a period of years in the separate funds to maintain the "contingent endowment" feature of the plan are lost.

You request my opinion as to the sufficiency of the title. In my opinion, it is very doubtful whether the title conforms with the requirements of Article III, Section 16 of the Florida Constitution. It gives notice only that Section 4441, Revised General Statutes, is being amended and that same relates to fraternal benefit societies, but it does not give notice that such societies are thereby authorized to issue policies constituting strictly wagering contracts. It is my established policy, however, to advise administrative officers to resolve all doubts in favor of the constitutionality of legislative acts as written.

In my opinion Chapter 17947 abolishes restrictions as to the ages of members to whom certificates may be issued. As hereinabove stated, Section 4441, Revised General Statutes of Florida, 1920, as amended by Chapter 17947 stands in the place of the original Section 4441. Therefore, Chapter 17947 does not remove the restrictions in other sections of the law as to the conditions under which members may be accepted and the terms and conditions of the certificates and selection of beneficiaries.

It is my opinion that Chapter 17947 has no effect upon the requirements set forth in the following sections:

- Section 4430 Revised General Statutes (6394 C.G.L.);
- Section 4435 Revised General Statutes (6399 C.G.L.);
- Section 4438 Revised General Statutes (6402 C.G.L.);
- Section 4439 Revised General Statutes (6403 C.G.L.);
- Section 4442 Revised General Statutes (6406 C.G.L.);
- Section 4446 Revised General Statutes (6410 C.G.L.);
- Section 4458 Revised General Statutes (6422 C.G.L.);
- Section 4464 Revised General Statutes (6428 C.G.L.);

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It is further my opinion that Chapter 17947 does not affect the provisions of Section 4440, Revised General Statutes (6404 C.G.L.) except to provide for the so-called contingent endowment certificate as hereinabove more fully considered. I do not believe that Chapter 17947 alters in any way the right of fraternal benefit societies operating under laws relating thereto to accept general or social members to whom insurance certificates are not issued or that Chapter 17947 authorizes the maintenance by any such society of reserves lower than those required under other sections of the law relating to such societies.

Fraternal benefit societies organized under the laws relating thereto enacted by the Legislature of Florida are subject to the same restrictions in relation to admission of members and issuance of certificates outside the State of Florida as they are within the State. Such a fraternal benefit society would be domiciled in the State of Florida. It is recognized in other States only through what is generally referred to as comity among States. The laws relating to fraternal benefit societies become a part of the charter of such a corporation organized in this State and affect the general activities of the corporation.

October 26, 1938.

FRATERNAL BENEFIT INSURANCE—CHAPTER 17070, LAWS
OF FLORIDA, ACTS OF 1935

Dear Sir:

This is in reply to your letter of October 4th, enclosing an original letter from Mr. * * *.

Mr. * * * states that a certain fraternal benefit lodge is considering the adoption of a funeral benefit plan whereby each member would be assessed upon the death of any member, and that upon such a death, the family of the deceased member would be paid \$100.00. It is proposed that one of the members of the lodge, who is an undertaker, would agree to furnish a \$150.00 funeral or \$150.00 worth of services and merchandise in connection with a funeral, upon assignment to him of a certificate entitling the beneficiaries of the deceased to the payment of the benefits amounting to \$100.00. The proposed plan contemplates that such arrangements are entirely optional, the beneficiary having the right to receive the cash and to use same in any manner he may see fit. You request my opinion as to whether the proposed plan hereinabove outlined violates the provisions of Chapter 17070, Laws of Florida, Acts of 1935.

It is not clear, from the statement set forth in the letter of Mr. * * *, whether or not the proposed plan is to be incorporated in a contract. Assuming that it is, it is my opinion that such a contract would be in violation of the provisions of Chapter 17070.

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Section 4 of Chapter 17070 reads as follows:

"That from and after the passage of this Act, it shall be unlawful for any Life Insurance Company, Fraternal Benefit Society, Sick and Funeral Benefit Insurance Company, or any company, corporation or association engaged in a similar business in the State of Florida, to issue any policy, contract or certificate upon the life of any citizen of this State, providing therein that the face amount, or any part thereof, or any loss or indemnity that might accrue thereunder, *shall be paid in other than legal tender of the United States and of this State, and it shall be unlawful for any such payment to be made or withheld for the purpose of either directly or indirectly inducing, or in furtherance of any arrangement or agreement designed to induce, the enforcement of a particular person, firm or corporation to conduct the funeral of the insured.*" (Italics ours.)

The proposed plan contemplates the issuance of a certificate entitling the beneficiary to receive either cash or funeral services, upon assignment to a particular undertake. In this respect the proposed plan violates the requirement of Section 4, that the policy or contract shall be paid in legal tender of the United States and of this State. While it is true that such certificate, at the option of the beneficiary, is payable in cash, the issuance of such a certificate would amount to withholding payment for the purpose of indirectly inducing the employment of a particular person, firm or corporation to conduct the funeral of the insured, contrary to the provisions of said Section 4.

The intent of the Legislature, in enacting Chapter 17070, was obviously to completely separate the undertaking business from the insurance business. It is, therefore, my opinion that the proposed plan is contrary to such legislative intent.

August 16, 1938.

GROSS PREMIUM TAXES—SECTION 911, REVISED GENERAL
STATUTES, CHAPTER 10151, ACTS OF 1925

Dear Sir:

You request my opinion as follows:

"Please advise this Department whether a gross premium tax on marine hull insurance was provided for under the gross premium tax law in effect prior to the amendment of 1925, or whether such tax was levied for the first time by virtue of said amendment."

From 1917 to 1925 the only statutory provisions purporting to levy a gross premium tax were incorporated in Section 911, Revised Gen-

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eral Statutes, 1920. The pertinent provisions of Section 911 were as follows:

"That each insurance company or association, firm or individual doing business in this State, including corporations or associations engaged in the business of insuring against fire, indemnity, accidents to the person, acting as surety upon bonds guaranteeing the fidelity of employees, and insuring employers against liabilities for accident to employees, and life insurance companies, shall pay to the State Treasurer a license tax of two hundred dollars; plate-glass insurance companies shall pay to the State Treasurer a license tax of fifty dollars, and in addition thereto each of said companies shall, upon the thirty-first day of January after the passage of this Act, and upon the thirty-first day of each succeeding January thereafter, pay to the State Treasurer two per cent of the gross amount of receipts of premiums from policy holders in this State."

The Legislature of 1925 enacted Chapter 10151, Acts of 1925, the pertinent provisions of which read as follows:

"Sec. 2. All premiums on policies or other contracts of like nature on property or business in this State executed by fire and marine insurance companies, surety companies, and policies or other contracts of indemnity coverage, *whether issued directly by a Florida resident agent or countersigned by him*, shall be included by the company in its exhibit of Florida business in its annual financial statement to the State Treasurer and said premiums shall be taxable in this State in accordance with the laws providing for the taxation of premiums from policyholders in Florida." (Italics ours.)

Under the provisions of said Chapter last above mentioned, it is not disputed that gross premiums on marine insurance policies on property in Florida are now taxable, regardless of whether the policies are issued directly by resident agents or not. The question presented is whether they were so taxable under the provisions of Section 911, Revised General Statutes of 1920, hereinabove set forth.

After considering the provisions of Section 911, Revised General Statutes, 1920, and Chapter 10151, Acts of 1925, hereinabove set forth, it is my opinion that the Legislature intended the latter statute to broaden the scope of tax liability so as to include tax on gross premiums on policies of marine hull insurance not issued directly by Florida resident agents.

It must be assumed that Chapter 10151, Acts of 1925, was intended to change the law existing prior to its enactment. See *Atlantic Coast Line R. Co. vs. Amos*, 115 So. 315, Headnote 1.

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To summarise my conclusions in the matter: (1) Gross premiums on marine hull insurance policies were subject to taxation prior to the enactment of Chapter 10151, Acts of 1925, only on policies directly issued by agents in the State of Florida; and (2) after the enactment of Chapter 10151, Acts of 1925, gross premiums on marine hull insurance policies on property located in Florida were taxable, regardless of whether the policies were issued directly by resident or non-resident agents.

January 11, 1937.

INSURANCE OF PUBLIC SCHOOL BUILDINGS IN MUTUAL FIRE INSURANCE COMPANIES

Dear Sir:

Pursuant to your request, and due to the fact that numerous inquiries are being made of this office for information, I am writing this letter, which is in effect a recapitulation of previous opinions rendered by me.

Article IX, Section 10 of the Constitution of Florida provides in part as follows:

"Nor shall the State become a joint owner or stockholder in any company, association or corporation. The legislature shall not authorize any county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual."

Under date of January 18, 1934, I rendered opinion to the effect that the insurance of public school buildings in mutual fire insurance companies is prohibited where the policy of insurance makes provision for the assessment of the members of such mutual company and for a division of profits with such members.

On February 12, 1934 and May 8, 1934, I also rendered opinions touching upon this matter. In the opinion of May 8, 1934, I reached the conclusion that it is not legal to insure school buildings in foreign mutual associations or companies doing business in the State of Florida, when there is any contingent liability assumed or agreed to be paid by the school authorities, or where such school authorities, in effect, become members of the association or corporation by sharing in the profits (or surplus over cost) thereof. The result of the opinion last mentioned was that my opinion under date of February 12, 1934, which was confined to domestic mutual fire insurance associations organized under the Laws of Florida, was extended, subject to the same restrictions, to foreign mutuals doing business in Florida.

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Restated, the combined effect of the previous opinions was to hold that the insurance of public school buildings is prohibited in mutual companies, either domestic or foreign, where the policy provides for the assessment of the members of such company and for division of profits with such members. Such insurance is likewise unauthorized where there is any contingent liability assumed or agreed to be paid by the school authorities; or where such school authorities, in effect, become members of the association or corporation by sharing in the profits as above set forth.

Later a question arose as to whether such insurance could lawfully be placed with a foreign company issuing policies in Florida similar to those usually issued by stock fire insurance companies, in which policies there was no provision either for the assessment of policyholders in case of loss, or for a distribution of profits to such policyholders. It was with this situation that I was dealing in rendering my opinion under date of October 10, 1934. In that opinion I reached the conclusion that, under the circumstances pointed out, in view of the fact that no provisions were made in the policy, either for the assessment of members or for distribution of profits, school boards or other local authorities might properly insure public buildings in such a company.

Thus it is that wherever provision for assessment is made, or wherever provision is made for participation in profits, or surplus over cost, or wherever any contingent liability is assumed or agreed to be paid by the policyholder, insurance of such public school buildings by such a policy, in such a company, is not authorized.

I trust that this restatement of my views will serve to clear the matter up in such a manner as that these insurance companies which desire to write policies of insurance, may be able to determine for themselves whether or not the type of policy which they write is one which the local school authorities are authorized to acquire.

March 22, 1937.

INSURANCE—PUBLIC LIABILITY ON OPERATION OF FERRY BOATS

Dear Sir:

I have your letter of March 9, in which you ask what position you should take in reference to the securing of public liability insurance on the operation of ferry boats between the mainland and Key West.

You state in your letter as follows:

"The Governor in making application, however, certified that the money so granted would not be expended for purposes expressly denied by the Federal Emergency Relief Administration rules and regulations. There was among such regulations a prohibition against the

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use of these funds for certain items, including injury compensation, bond premiums and insurance premiums."

Some of the other state departments carry liability insurance and I think it would be permissible for you to do so in the absence of specific federal prohibitions as quoted above.

I would not advise the use of funds secured from the Federal Government for such purposes, without the permission of the federal department.

December 16, 1938.

**INSURANCE—RETURN OF DEPOSIT MADE BY SICK AND FUNERAL
BENEFIT COMPANY**

Dear Sir:

You state that Life and Casualty Insurance Company of Nashville, Tennessee, has requested you to return securities deposited under the provisions of Section 6266, Compiled General Laws of Florida, 1927. This deposit was originally made by said company in order to qualify as a sick and funeral benefit insurance company. Some years ago this company procured a license and certificate of authority from you as a legal reserve company, rather than a sick and funeral benefit company and is now licensed and authorized as a legal reserve life insurance company.

The deposit to which you refer is required of sick and funeral benefit insurance companies under two separate statutory provisions. Section 6263, Compiled General Laws, 1927, and Section 6266, Compiled General Laws, 1927, obviously refer to the same deposit.

Under the provisions of Section 6263, Compiled General Laws, this deposit has to be held by you in trust for the protection of the lawful claims of policy-holders in Florida. In determining whether this deposit may be returned it is essential to consider not only whether the company is still licensed as a sick and funeral benefit company but also whether any of the policies written by it as such are still outstanding. If you determine the fact to be that the company has no sick and funeral benefit policies outstanding, then you would be authorized to return the securities, for the purpose of the deposit has been fulfilled.

November 30, 1938.

**INSURANCE—RETURN OF DEPOSIT MADE UNDER CHAPTER
14521, ACTS OF 1929**

Dear Sir:

Peninsular Life Insurance Company of Jacksonville seeks to withdraw a deposit made with you as Insurance Commissioner of Florida.

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You request my opinion as to whether such withdrawal is proper and legal.

Substantially stated, the history of the deposit under consideration is as follows: The Peninsular Life Insurance Company made a voluntary deposit of \$100,000.00 in order to permit it to do business in certain other states prior to the enactment of Chapter 14521, Laws of Florida, Acts of 1929. At the time said deposit was made there was no express statutory authority for same but this was provided in Section 3 of said Chapter 14521. After the enactment of the statute this deposit, as well as several other similar deposits, were treated as being under said Section 3.

In November, 1933, the Board of Directors of the Peninsular Life Insurance Company adopted a resolution to increase its deposit "to an amount necessary to cover the legal reserve of all outstanding policies (less policy loans) as provided in Chapter 14,521, Laws of Florida." Such action would constitute the deposit as one made under the provisions of Section 2 of said statute. Section 2 reads as follows:

"Any life insurance company now incorporated, or which may hereafter be incorporated under the laws of this State, may deposit with the Insurance Commissioner, for the common benefit of all the holders of its policy and annuity bonds, securities of the kinds in which by the laws of the State it is permitted to invest or loan its funds, equal to the legal reserve on all its outstanding policies in force, less any loans or liens against such policies not in excess of such legal reserve; which securities shall be held by said Insurance Commissioner in trust for the purposes and objects herein specified. Any such company may deposit lawful money of the United States in lieu of the securities above referred to, or any portion thereof, and may also, for the purpose of such deposit, convey to said Insurance Commissioner in trust the real estate in which any portion of its said reserve may be lawfully invested, and in such case said Insurance Commissioner shall hold the title thereto in trust until other securities in lieu thereof shall be deposited with him, whereupon he shall reconvey the same to such company; said Insurance Commissioner may cause any such securities or real estate to be appraised and valued prior to their being deposited with or conveyed to him in trust as aforesaid; the reasonable expense of such appraisal or valuation to be paid by the company.

"After making the deposit referred to herein, no company shall thereafter issue a policy of insurance or endowment or annuity bond, except policies of industrial insurance, or sick and funeral benefit insurance, unless it shall have upon its face a

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certificate substantially in the following words: *'This policy is registered, and approved securities equal in value to the legal reserve hereon are held in trust by the Insurance Commissioner.'*" (Italics ours.)

The deposit provided for under Section 2, hereinabove set forth is purely *voluntary*. The advantage to be derived from making such a deposit would be the right to have endorsed upon the face of policies issued the fact that each particular policy has been registered, and approved securities equal in value to the legal reserve on all outstanding policies are held in trust by the Insurance Commissioner. Such an endorsement could be made the basis of a persuasive sales argument in marketing policies of insurance, particularly in times of economic depression and uncertainty. It seems, however, that Peninsular Life Insurance Company did not have any of its policies endorsed as provided in Section 2, and the Company has assured the Insurance Department that no representations based on such deposit have been made by its agents in selling the policies.

Section 3 of the statute here considered reads in part as follows:

"Be it further enacted, That the Insurance Commissioner if the State, in his official capacity, shall take and hold in trust any deposit made by any domestic insurance company for the purpose of complying with the laws of any other State, to enable such company to do business in such State; and shall also, in a like manner, take and hold any deposits made by a foreign insurance company under any law of the State. The company making such deposits shall be entitled to the income thereof, and may, from time to time, with the consent of the Insurance Commissioner, when not forbidden by the law under which the deposits are made, change in whole, or in part, the securities which compose the deposit for other competent securities of equal value. *Upon request of any domestic insurance company, said Insurance Commissioner may return to such company the whole or any portion of the securities of such company, when he shall be satisfied that the securities so asked to be returned are subject to no liability, and not required to be longer held by any provision of law or purpose of the original deposit.*" (Italics ours.)

It is to be noted that the deposits authorized under Sections 2 and 3 of the statute are different. The deposit authorized under Section 2 is for the purpose of establishing a trust fund in the hands of the Insurance Commissioner equal in amount to the reserve on outstanding policies so as to promote public confidence in the stability of the insurance companies making such deposits. The purpose of the deposit under Section 3 is to comply with requirements prescribed by the laws

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of other states for transacting business in such other state. The question here to be determined is whether the provisions of Section 3 hereinabove italicized apply to deposits made only under Section 3 whether they apply to deposits made under Section 2 as well.

It is my opinion that the provisions of Section 3 hereinabove italicized apply to both types of deposits. It therefore follows that when you as Insurance Commissioner are satisfied (1) that the securities so asked to be returned are subject to no liability; (2) are not required to be longer held by any provision of law of other states in which the company does business; or (3) are not required to be longer held to fulfill the purpose of the original deposit, you may return said deposit.

December 6, 1937.

INSURANCE—TIRE GUARANTEE CONTRACTS AS CONSTITUTING

Dear Sir:

You submit two separate forms of contracts, the first issued by Gates Rubber Company of Denver, Colorado, and the second by Standard Oil Company of Kentucky. You request my opinion as to whether these contracts, respectively, constitute contracts of insurance or indemnity under the laws of Florida.

In order that my opinion may be clearly understood, I attach a copy of the Gates Rubber Company Contract to this opinion, marked Exhibit A, and a copy of the Standard Oil Company contract as Exhibit B.

The problem presented by your request for my opinion is whether or not the contracts under consideration constitute contracts of insurance or warranty. If they constitute contracts of insurance, then the Company issuing same must qualify as an insurance company under the provisions of Section 6197, et cetera, Compiled General Laws of Florida, 1927. If, on the other hand, they are contracts of warranty, their issuance is of no concern to the Insurance Department.

The Supreme Court of Florida in the case of *State ex rel Landis vs. DeWitt C. Jones Company*, 147 So. Text, page 232, has approved a definition of what constitutes insurance in the following words:

"In *Cooley's Brief on L. of Ins.* vol. 1, p. 5, an insurance contract is defined as:

'An agreement by which one party for a consideration promises to pay money, or its equivalent, or do some act of value to the assured, upon the destruction or injury of something, in which the other party has an interest.'"

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The following is a definition of warranty contained in Vol. 3, Words and Phrases, Fourth Series, p. 838:

"A 'warranty' is a statement or representation made by the seller of goods, contemporaneously with and as part of the contract of sale, though collateral to the express object of it, having reference to the character, quality, or title of the goods, and by which he promises or undertakes to insure that certain facts are or shall be as he then represents them. *Hawkins vs. Haynes*, 150 S. E. 442, 40 Ga. App. 532."

It would appear that the essential distinction between a contract of insurance and one of warranty is that the contract of insurance indemnifies against specific losses not associated with the quality of merchandise involved, whereas a contract of warranty is definitely connected with the quality of the merchandise.

Applying these principles to the two contracts under consideration, it is my opinion that the Gates Rubber Company contract is a contract of warranty. It states, to begin with, that the tire is guaranteed against failure in service, for the reason that it is of superior quality. Each of the instances specified in the contract as requiring repair or replacement of the tire has a definite relationship to the warranted quality of the tire.

The contract of Standard Oil Company, however, is distinguishable from the contract of the Gates Rubber Company in the following respects:

(1) It does not specifically state that the guarantees therein have any relation to the quality of the tire. This is a minor distinction, however, because such could be implied.

(2) The words "or any other road hazard" appearing therein have no logical relation to the quality of the tire. Such road hazards are risks ordinarily assumed by the owner of a tire, and when the tire dealer undertakes to assume such risks, it is engaging in the insurance business to that extent.

My conclusion in regard to the latter contract is in accord with the conclusions reached by the Attorneys General of the States of Ohio, Arkansas, Kentucky, Texas, South Carolina, Kansas, and Georgia.

CHAPTER VII SCHOOLS

SECTION 1 SCHOOL TEACHERS

June 28, 1937.

ATTENDANCE BY STUDENTS OF ONE COUNTY TO SCHOOLS OF ANOTHER—PAYMENT OF AMOUNTS DUE OUT OF STATE TEACHERS SALARY FUND

Dear Sir:

You enclose a letter from Honorable Charles A. Mitchell concerning a problem arising in connection with the attendance of negro high school students from Indian River County in the negro high school of St. Lucie County. Indian River County has agreed to pay as tuition for such students Two Dollars per month per student, which it seems represents the estimated cost of teachers' salaries for the students from Indian River County who are instructed in the St. Lucie County schools.

You request my opinion as to whether or not such tuition payment may be paid from the State funds accruing to Indian River County for teachers' salaries. In this connection I call your attention to Section 511, Compiled General Laws of Florida, 1927, which reads as follows:

"When it is more convenient for youth residing in one county to attend school in an adjoining county, they may do so by the concurrence of the superintendents of public instruction of the two counties. The proportion of school money for each youth shall be transferred by requisition of the county superintendent of public instruction of the county in which the youth resides, upon the treasurer of the school funds of that county to the treasurer of the school funds of the county in which the school is located."

It is my opinion that State funds held in the Teachers Salary Fund of Indian River County in the custody of the State Treasurer may be utilized for the payment of teachers in St. Lucie County under the following conditions:

1. The county superintendent of the two counties must concur in the arrangement, in accordance with the provisions of Section 511, above set forth.
2. The State Treasurer as Custodian of the Teachers Salary Fund of Indian River County shall, upon requisition of the county superintendent of that county transfer to the Teachers Salary

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Fund in his custody for St. Lucie County the amount of such requisition.

The funds so transferred shall then become a part of the Teachers Salary Fund of St. Lucie County, subject to withdrawal for the sole purpose of paying salaries of teachers and cost of transporting students.

May 4, 1937.

AUTHORITY OF TRUSTEES TO NOMINATE TEACHERS FOR
COUNTY HIGH SCHOOL

Dear Sir:

You request my opinion as to whether or not trustees of the special tax school district in which a County high school is located have the authority to nominate the high school teachers and principal. You state that the County high school is operated from the general school funds of the County, and, therefore, would not be a special tax school district school.

Section 710, Compiled General Laws of Florida, 1927, provides that the trustees shall have the power to nominate to the County Board of Public Instruction teachers for all schools within the special districts. The Supreme Court of Florida, in the case of Board of Trustees vs. Board of Public Instruction of Orange County, reported in 156 So. 318, said the following in its opinion:

"The contention that the trustees of a special tax school district have no right to nominate a teacher to be principal for a school or schools of a *special tax school district* cannot be sustained. Whether one be employed as a teacher in the ranks in the school system, or in an advanced grade amounting to a supervising instructor, he is nevertheless a teacher, and the provisions of Section 710, C.G.L., Section 569 R.G.S., are applicable, and the rule laid down in *State ex rel Pittman vs. Barker* (Fla.) 152 So. 682, will govern the rights of the parties interested." (Italics ours.)

In my opinion, the power to nominate school teachers conferred upon the trustees in said Section 710 applies only to special tax school district schools and not to a County high school operated entirely from County school funds. Such, in my opinion, was what the Legislature intended.

April 9, 1937.

CORPORAL PUNISHMENT OF PUPILS

Dear Sir:

This is in reply to your letter of April 8th, * * *. You request my opinion as to whether or not it is within the law for a school teacher

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in the public school system to slap a child in the face or otherwise inflict corporal punishment.

Section 669, Compiled General Laws of Florida, 1927, directs teachers among other things as follows:

"To enforce needful restrictions upon the conduct of the pupils in or near the school house or grounds, avoiding at all times unnecessary severity and measures of punishment that are degrading in their tendency."

The following is from Volume 56, Corpus Juris, pages 855-856:

"CORPORAL PUNISHMENT. As a general rule a school teacher, in so far as it may be reasonably necessary to the maintenance of the discipline and efficiency of the school, and to compel a compliance with reasonable rules and regulations, may inflict reasonable corporal punishment upon a pupil for insubordination, disobedience, or other misconduct, even though he is over school age, and may take him away from the school and outside the school grounds to chastise him * * *."

I find no law of the State of Florida expressly prohibiting corporal punishment. Under the general rules stated in Corpus Juris, therefore, it would seem that a teacher would have the right to inflict reasonable corporal punishment when it is absolutely necessary to enforce needful restrictions upon the conduct of pupils in or near the school house or grounds. What is reasonable corporal punishment would necessarily have to be determined after consideration of the facts of each individual case and no general rules could be stated relating thereto.

June 23, 1937.

COUNTY BOARD OF PUBLIC INSTRUCTION NOT AUTHORIZED TO PRESCRIBE QUALIFICATIONS

Dear Sir:

This is in reply to your letter of June 22nd, in which you request my opinion as to whether or not the County Board of Public Instruction can legally establish the policy of employing as teachers only those persons residing within the County.

The County Board of Public Instruction is without authority to prescribe any qualifications for teachers except in exercising powers delegated by law. In view of the fact that Chapter 16183, Laws of Florida, Acts of 1933, requires all persons employed to work for the State of Florida or any County of the State to be bona fide residents of the State for two years next prior to such employment, it would

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appear that the law specifically requires only residence in the State and not the County. In other words, since the Legislature has expressed intention contrary to such a proposed regulation of the County School Board, such a regulation would not be valid.

May 25, 1937.

**DISPOSITION OF BALANCE LEFT IN SALARY FUND AT
CLOSE OF SCHOOL YEAR**

Dear Sir:

This is in reply to your request for my opinion as to what disposition should be made of a balance left in the Teachers Salary Fund of any County at the close of the school year. In other words, is this balance continued in the Teachers Salary Fund of the County involved from year to year, or is it re-allocated?

Section 508 (9) Compiled General Laws of Florida, Supplement, provides for the monies apportioned to the various Counties of the State to be disbursed to the State Treasurer as ex officio Treasurer of the Teachers Salary Fund of the respective Counties. I find no provision for the disposition of any balance other than that set forth in Section 508 (11) Compiled General Laws of Florida, Supplement, which authorizes but does not specifically require the surplus to be used to pay teachers salaries over and above the scale of maximum salaries as provided by the State Board of Education.

It is, therefore, my opinion that such balances are to be carried over from year to year and are not to be reallocated.

December 16, 1938.

**LEGALITY OF PAYING TEACHERS AND PRINCIPALS
ABSENT FROM DUTY**

Dear Sir:

This is in reply to your letter of November 25th in which you quote * * * as follows:

"A number of our principals and teachers from time to time are invited to appear on various educational programs and to attend educational conferences. We do not object to employing a substitute teacher during any absence of this kind, but question the legality of paying the salary, as in our opinion teachers are entitled to pay for a day's absence from school only in the case of illness or death in the immediate family."

The question of paying teachers during absence from school has been provided for by the Legislature in Chapter 13881, Laws of Florida,

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Acts of 1929 and Sections 672-674, Compiled General Laws of Florida, 1927. Under the statutes teachers are allowed a definite sick leave and the right to be absent by reason of death in the immediate household. Teachers may also obtain a leave of absence from duty but must pay the compensation of a qualified substitute.

It occurs to me, however, that some few occasions may arise in which it would be definitely advantageous to the school system for a principal or teacher to attend an educational conference. Under such circumstances it is my opinion that the County Board of Public Instruction has the authority in the exercise of its sound discretion to permit such a teacher or principal to attend an education program or conference. The statutes hereinabove referred to relate entirely to absence from duty for reasons which are strictly personal to the teacher. If in the opinion of the County Board it is desirable that a teacher be absent for reasons having a bearing on the interests of education in the county, the County Board would have the right to pay the salary of the teacher for the time he or she may be so absent, as well as the salary of a substitute.

June 9, 1937.

LOANS TO PAY TEACHERS AND BUS DRIVERS

Dear Sir:

This is in reply to your recent communication * * *.

Mr. * * * states that a great number of the schools in his County operate during the summer and that it will be necessary to secure a loan in order that the teachers and bus drivers may be paid. You request my opinion as to whether or not such a loan would be legal if made before July 1, 1937.

The school year extends from July 1st until the last day of the following June. See Section 496, Compiled General Laws of Florida, 1927. It was undoubtedly the intent of the Legislature in enacting Chapter 16171, Laws of Florida, Acts of 1933, which authorizes borrowing not exceeding eighty per cent of the estimated amount to be received from the State during a particular year, that the loan should be repaid out of funds accruing during the same year as made. Any loans to be made before July 1, 1937 would, therefore, be made on the basis of the estimate heretofore made for the year ending June 30, 1937, and would be limited to eighty per cent of the balance to be received before June 30, 1937. In other words, it is my opinion that loans can not be made before July 1, 1937 based upon an estimate of revenues to be received during the school year beginning July 1, 1937.

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May 21, 1938.

**NOMINATION AND APPOINTMENT OF TEACHERS—POWERS OF
BOARDS OF TRUSTEES AND COUNTY BOARDS OF
PUBLIC INSTRUCTION***Dear Sir:*

This is in reply to your letter of May 20th in which you propound the following questions:

"1. Can a county board of public instruction reject the nomination of a teacher whose certification does not cover the vacancy to be filled in accordance with standards of accreditation of schools which have been approved by the State Board of Education?

"2. Can the county board of public instruction set a reasonable date by which all nominations by trustees shall be filed? If trustees wilfully or otherwise refuse or fail to nominate teachers by that date, can the county board then proceed to appoint a teacher for the position?

"3. Can the county board determine the maximum number of teachers to which a school shall be entitled, or must they appoint all teachers properly nominated by trustees for that school, regardless of the number of children who may be enrolled? If the county board can determine the number of teachers to be appointed in a given school, and if the trustees nominate more teachers than can be appointed, has the county board the right to determine which nominations shall be rejected?"

Answering your first question, it is my opinion that a county board of public instruction may reject the nomination of a teacher whose certification does not cover the vacancy to be filled in accordance with standards of accreditation of schools which have been approved by the State Board of Education. Failure to measure up to such standards would constitute sufficient legal reason for rejection of the nomination.

Your second question must be answered in the affirmative. The county board may set a reasonable date by which all nominations by trustees shall be filed. Under the provisions of Section 710, Compiled General Laws of Florida, 1927, the trustees "have the power" to nominate. The statutes do not, however, require nomination by trustees as a condition precedent to the appointment of teachers. The best interests of the school system require that the appointment of teachers proceed in an orderly manner and this should not be unduly delayed.

Answering your third question it is my opinion that the county board is required to determine the number of teachers to which a school

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shall be entitled. The county board is required by law to contract and provide for the payment of teachers in all schools of the county and this power carried with it by implication the authority to determine how many teachers shall be engaged. The trustees should be informed concerning the number of positions to be filled. After having been so informed, if the trustees nominate more teachers than can be appointed the county board has the right to make the appointments from the list of nominations submitted by the trustees. The county board, however, is not required to appoint every one on such a list.

June 24, 1937.

NOMINATION AND APPOINTMENT OF TEACHERS

Dear Sir:

This is in reply to your letter of June 17th enclosing letter of Mrs. B. You request my opinion as to the time when nomination should be made by the Trustees. It seems that there is some conflict between the outgoing and incoming Boards of Trustees concerning the nominations.

The time for making the nominations would necessarily be governed by the time for actually making the appointments. It is well settled, of course, that the Trustees make the nominations and the County Board of Public Instruction makes the appointments. The following is from the opinion of the Supreme Court of Florida in the case of *Kelly vs. Board of Public Instruction of Baker County*, 141 So. 311, 105 Fla. 398:

"Section 454 R.G.S., 561 C. G. L., in sub-paragraph 6 thereof, specifically authorizes County Boards of Public Instruction to employ teachers for every school in the county and to contract with and pay the same for their services. This provision of the statute is ample authority for the County Board of Public Instruction to enter into contracts with teachers for employment during the ensuing school year or term if the contract be made prior to the opening of the school or to enter into such a contract during any school term for services to be performed during the then current term."

So long as nominations are made prior to the opening of the school or during any school term for services to be performed during the then current term it would be of no legal consequence whether the nominations were made by the incoming Board or the outgoing Board. It would follow, of course, that a Board of Trustees would have no authority to nominate teachers for a period of time exceeding the next school year.

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August 2, 1937.

**RACE TRACK FUNDS TO BE USED FOR PAYING SALARIES AND
SCHOOL BUS TRANSPORTATION***Dear Sir:*

I acknowledge receipt of your letter of July 31st, requesting an opinion on the matter stated in the letter of the Honorable George Atkins, County Superintendent of Calhoun County, a copy of which is attached to your letter.

Chapter 17213, Laws of Florida, Acts of 1935, requires one-half of all monies received by Calhoun County from race track funds under the provisions of Chapter 14832, Acts of 1931, to be distributed to the Board of Public Instruction for Calhoun County, and that the same be used for the purpose of paying teachers' salaries and for school bus transportation.

It is my opinion that this money cannot lawfully be used for any other purpose than that of paying teachers' salaries, and for school bus transportation.

May 10, 1937.

**RESIDENTIAL QUALIFICATIONS UNDER CHAPTER 16183,
ACTS OF 1933***Dear Sir:*

This refers to your inquiry relative to residential qualifications of a person employed as a teacher in our public schools under Chapter 16,183, Laws of Florida, Acts of 1933.

It is my opinion that Chapter 16,183, Laws of Florida, Acts of 1933, will prohibit any person from teaching in this State unless and until such person has established and had a bona fide legal domicile in this State for two years next prior to any employment.

It is my opinion that it is immaterial how long a teacher has taught in this State if she has maintained her legal domicile in another State, and she will not be prohibited by Chapter 16,183, Laws of Florida, Acts of 1933, from teaching in this State until she has established and maintained her legal domicile in this State for two years next prior to any employment.

You ask what are the qualifications of a bona fide resident in the meaning of this Act. It is my opinion that the meaning of a bona fide resident under Chapter 16,183, Laws of Florida, Acts of 1933, means that, a person must have had his legal domicile, or maintained his

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home in this State continuously for two years next prior to any employment for the State. His permanent home and domicile does not necessarily mean that he must have been actually, personally and physically in this State all of that time, but it does mean that he must have maintained Florida as his legal home. In other words, where he votes, the place where his citizenship stays, the place when away from he returns to, is his domicile or legal or permanent or final home.

February 14, 1938.

**RIGHT OF STATE BOARD OF EDUCATION TO RESTORE REVOKED
CERTIFICATE OF TEACHER**

Dear Sir:

You request my opinion as to whether or not the State Board of Education has the right to restore the revoked certificate of a teacher.

Provision is made in Section 648, Compiled General Laws, for the suspension or revocation of certificates. The following is from Section 648:

"Any certificate may be suspended or revoked after hearing, by the State Superintendent of Public Instruction or the State board of education, upon their own motion, or upon the recommendation of any county superintendent of public instruction, when the holder proves to be incompetent, unsuccessful or guilty of some gross immorality."

It is my opinion that the State Board of Education may at any time reconsider action taken by it in revoking a teacher's certificate. If circumstances are brought to the attention of the Board which indicates that its action in revoking a particular certificate was improvident, erroneous or inequitable it is my opinion that the revocation may be vacated and the certificate restored.

March 19, 1937.

**SICK LEAVE WITH PAY WHEN SICKNESS CONTRACTED
IN SCHOOL ROOM**

Dear Sir:

This is in reply to your request for my opinion concerning the amount of sick leave with pay a teacher is allowed when the illness from a contagious or infectious disease was contracted in the school room. You enclose a letter from C. F. Barden stating that he was absent from his classes for thirteen days by reason of contracting mumps in the school room.

Section 674 (3) when construed with Section 674 (4) Compiled General Laws of Florida, Supplement, would indicate that a teacher shall receive pay for ten days while absent from his or her duties on sick

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leave because of personal injury incurred in the discharge of duty or because of illness from any contagious or infectious disease contracted in the school room. While the last named section appears to provide that the teachers shall receive full pay during the period of his or her incapacitation from said causes, this period would seem to be limited by the preceding section to ten days.

This period of ten days is in addition to the cumulative sick leave, cumulative from year to year to a limit of not less than twenty days. In other words, the teacher when absent by reason of illness from any contagious or infectious disease contracted in the school room, would be allowed, in addition to ten days, such sick leave as has been accumulated from year to year.

June 22, 1938.

**TEACHERS' PENSIONS—APPLICABILITY OF CHAPTER 18045,
ACTS OF 1937**

Dear Sir:

You request my opinion as to whether or not Chapter 18045, Laws of Florida, Acts of 1937 applies to school teachers' pensions.

Section 1 of said statute reads as follows:

"Upon the death of any pensioner, all money accrued from the date of last payment to date of death shall be paid to the person who shall have been designated by pensioner; said designation to be under oath and on form prescribed by Comptroller and filed in the office of Comptroller during the lifetime of pensioner. Upon the death of pensioner, the Comptroller is hereby directed to issue warrant, payable to the person so designated by pensioner, immediately upon notice of the death of said pensioner." (Underscoring ours.)

It is my opinion that said statute is applicable to teachers' pensions.

July 2, 1937.

**TEACHERS SALARY FUND TO PAY PORTION OF SALARIES
OF "HELPING TEACHERS"**

Dear Sir:

This is in reply to your letter of June 19th. You state that the Jeannes Foundation allocates funds to various southern states to pay a portion of the salaries of teachers known as "helping teachers". One of the requirements is that certain portions of the salary of said teachers be defrayed by the counties. You request my opinion as to whether or not it would be legal for counties to use their Teachers Salary Fund in matching the Jeannes Fund, for the purpose of paying such helping teachers.

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I understand that such "helping teachers" go into the rural negro schools and render assistance to the teachers in improving teaching methods. It is my opinion that the counties may use their Teachers Salary Fund for this purpose.

April 26, 1937.

**TRANSFER OF FUNDS FROM TEACHERS' SALARY FUND
NOT AUTHORIZED**

Dear Sir:

This is in reply to your letter of April 26th enclosing correspondence from Mr. * * *. Mr. * * * states that at the beginning of the present fiscal year the Board of Public Instruction adopted the policy of using local funds for paying teachers and bus drivers, thus saving the amounts accumulated in the Teachers' Salary Fund in case funds for payment of teachers should not be as much as anticipated. The result is that local funds are running low at a time when there is need for expenditures on a new school building being erected at Naples, while the Teachers' Salary Fund is more than adequate for the purpose of paying teachers' salaries for the balance of the fiscal year.

I call your attention to the following provisions contained in Section 7 of Chapter 16170, Laws of Florida, Acts of 1933, which reads as follows:

"No warrant shall be drawn against the Teachers Salary Fund of any County save and except for the purpose of paying the salaries of teachers in the public free schools of each County in the current scholastic year and for expense incurred in the transportation of pupils in said period, and each warrant drawn must state upon such warrant that the same is drawn for one of these purposes and none other."

I also call your attention to Section 8 of said Chapter 16170:

"No warrant shall be drawn by any County Board of Public Instruction against said Teachers Salary Fund of such County to pay any employee of such Board except principals and assistant principals in schools and teachers actually employed in teaching in the free public schools of such County, and for expenses incurred in transportation as provided by law."

It is apparent from the statutory provisions above set forth that the legislative purpose was to require the funds in the Teachers Salary Fund to be expended only for the purpose of paying salaries of principals, assistant principals, teachers and for transportation. In view of these emphatic limitations on the right to use such funds, it is my opinion that they can not be transferred even to replace local funds previously used to pay teachers salaries and for transportation of pupils.

SECTION 2

SPECIAL TAX SCHOOL DISTRICTS

May 20, 1938.

ADJUSTMENT OF ACCOUNTS BY BOARD OF PUBLIC INSTRUCTION UNDER FUTCH ACT—SECTION 7 OF CHAPTER 16252, ACTS OF 1933

Dear Sir:

You requested an opinion from my predecessor, the late Attorney General Cary D. Landis, concerning two question * * *. The first question is stated as follows:

"There has finally come to the School Board about \$90,000.00 approximately of School District bonds which had been accepted in payment of taxes under the Futch Law. But, of course, these bonds represent paid and cancelled securities. But in the payment of them quite a bit of the General School Fund was used. In other words, to illustrate the point, if a taxpayer had paid his taxes in cash a certain percent of that paid taxes would have gone into the General School Fund of the County, a certain percent would have gone into Special Tax School District No. 1, and a certain per cent would have gone to Special Tax School District No. 2, and so on. But, instead of paying cash, he would many times, under the Futch Bill, tender a bond of \$1,000, say, of Special Tax School District No. 1, to illustrate, and the bond would be received and in time would be, as has been, cancelled. So the obligation for Special Tax School District No. 1 bond for \$1,000.00 stands paid. But not only Special Tax School District No. 1 funds were used to pay it, because it was accepted in payment of the taxpayer's whole tax, and hence paid part of the General School Fund tax, and part of Special Tax School District No. 2 and part of Special Tax School District No. 3 tax, and so on. Now, what the School Board wants to do, and feels that it should do, and wants to be advised on, is this: Can the General School Fund charge Special Tax School District No. 1 with that amount of money belonging to the General School Fund which was used to pay the bond and transfer from Special Tax School District No. 1 sufficient money to square the account? In other words, the School Board wants to have a general accounting between the General School Fund and all the Special Tax School Districts so as to square the accounts between them all because of the acceptance of bonds under the Futch Bill. You can readily see that if Special Tax School District No. 1 bond had been used to pay only Special Tax School District No. 1 taxes and Special Tax School District No. 2 bond had been used to pay only

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Special Tax School District No. 2 taxes there would be no need for an accounting. But where a Special Tax School District No. 1 bond has been accepted to pay, not only Special Tax School District No. 1 taxes, but also the general school tax, as well as Special Tax School District No. 3 and No. 4 taxes, and so on, it seems that it would be but proper to have a general accounting between all the Districts, as well as between the General School Fund and the Districts, so as to determine what the Districts are due each other and what the Districts are due the General School Fund, and to transfer funds from one account to the other to square the balances found to be due. Can the School Board do this?"

Section 7 of Chapter 16252, Laws of Florida, Acts of 1933, reads in part as follows:

"The bonds or matured interest coupons received in redemption of such lands shall be held by the Clerk of the Circuit Court uncanceled and proper account shall be kept thereof for adjustments of accounts between the county and such other taxing units or districts as may be interested at such time or times as the Board of County Commissioners may direct."

I have considered every decision of the Florida Supreme Court construing the statutory provisions above set forth, but find no case exactly in point. It is obvious, however, that the statutory provision above quoted contemplates that an equitable adjustment of accounts shall be made. It is my opinion that the procedure outlined in the statement of the above question by Mr. * * * would be legal and proper.

The second question is whether or not the Board of Commissioners, in transferring excess fees from the various county offices under Section 2868, Compiled General Laws, are mandatorily required to transfer a portion of same to the General County School Fund. This would be a matter primarily involving the scope of the duties of the Board of County Commissioners. I would hesitate to render an opinion unless the request to you is made jointly by the Board of County Commissioners and the Board of Public Instruction.

June 15, 1938.

**AMENDMENT OF BUDGET UNDER SECTION 17 OF CHAPTER
18134, ACTS OF 1937**

Dear Sir:

You request my opinion concerning a problem which has arisen in Special Tax School District No. 11 of Pinellas County. It appears that there is a balance of approximately Twelve Hundred Dollars in the

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Interest and Sinking Fund of said District. This amount constitutes a surplus by reason of the fact that all outstanding bonds of the District have been cancelled. You inquire whether this surplus may be expended to make needed repairs on the school building constructed out of the proceeds of the original bond issue.

It is my opinion that Section 17 of Chapter 18134, Laws of Florida, Acts of 1937, presents a solution to the difficulty. Section 17 authorizes the County Board, with the approval of the State Superintendent, to amend any item or items in the budget for any fund or funds, by increasing the appropriation for any item or items and decreasing in corresponding amounts the appropriation for any other item or items. It is therefore my opinion that the budget may be amended and the funds made available for the purpose of making necessary repairs.

July 18, 1938.

APPOINTMENT OF DISTRICT TRUSTEES TO FILL VACANCIES

Dear Sir:

You request my opinion concerning the proper method of filling vacancies occurring in a Board of Trustees of a special tax school district.

Section 709, Compiled General Laws of Florida, 1927, reads in part as follows:

"* * * and all vacancies occurring in the board of trustees from any cause, shall be filled for the unexpired term by the county board of public instruction, *upon nomination by the patrons of the schools.*" (Italic ours.)

The above reference to "patrons of the schools" is the only reference which I have been able to find in the general school laws. The statutes do not define just who constitute "patrons of the schools." I have been advised that "patrons of the schools" have been generally recognized as that class of persons who send children to schools.

I have been further advised that the general practice through the State has been to circulate nominating petitions among patrons of the schools to be submitted to the Board of Public Instruction. If it appears to the Board that the petitions were properly circulated and in fact represent the will of the patrons of the schools it would be my opinion that they should consider themselves bound by such nominations.

The procedure above referred to is not provided by statute. It is my opinion that any method by which the patrons of the schools nominate trustees is sufficient. It is further my opinion that once it is definitely ascertained that the nominations have been made the Board should follow them.

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March 31, 1937.

AUDIT OF TRUSTEES' ACCOUNTS AUTHORIZED*Dear Sir:*

I am in receipt of your letter of the 27th instant making the following inquiry:

"Is the State Auditing Department authorized and required by law to audit the accounts of trustees of special tax school districts, when such accounts exist, and there is evidence that collections of non-resident pupil tuition and proceeds of sales of school property are deposited therein?"

In connection with the subject of your inquiry your attention is called to Section 508, Compiled General Laws of Florida, 1927, which requires every officers having monies which by law goes to the County School Fund to pay the same to the depository legally entitled to receive the same.

Your attention is further called to Article XII, Section 10, of the State Constitution providing for the creation of Special Tax School Districts and the election of school trustees "who shall have the supervision of all the schools within the district."

Your attention is further called to Section 709 of the above mentioned compilation which provides as follows: "The powers of trustees shall not be those of control but of supervision only."

Your attention is further called to Section 710 of the same compilation which provides that "all public schools conducted within a special tax school district shall be under the direction and control of the County Board of Public Instruction and County Superintendent as in other districts, and subject to the same laws, rules and regulations prescribed for the conduct of other schools, except that the trustees shall have the power to nominate to the County Board of Public Instruction teachers for all schools within such special district." Your attention is further called to Section 718 which provides that children residing outside of any special tax school district shall not attend school in any such district without the consent of the trustees thereof and the County Board of Public Instruction.

Your attention is further called to Section 709(1), Compiled General Laws of Florida, 1936 Supplement, reading as follows:

"In any county where any property, real or personal, is now held by, for or in the name of the trustees of special tax school districts for public educational purposes, such trustees or other persons or corporations holding such title shall within sixty days after May 31, 1933, convey or cause the same to be con-

SPECIAL TAX SCHOOL DISTRICT

veyed to the board of public instruction for said county, so that all property in said county devoted to public educational purposes shall be held by said board: Provided, however, nothing in this section shall infringe upon the supervisory powers of the local school trustees of special districts as provided by Section 10 of Article XII of the Constitution."

Your attention is further called to the case of *Logan vs. Board of Public Instruction of Polk County*, 118 Fla. 184, 158 So. 720, in which the Court holds that "the County Board of Public Instruction acts for the special tax school districts in financial matters."

From the above it will be seen that the statutes do not contemplate that trustees of special tax school districts shall receive and hold special tax school district funds in special accounts." The law contemplates that all school funds, including special tax school district funds, shall be deposited in the regular County school depository and handled by the Board of Public Instruction. When trustees of special tax school districts are, as a matter of fact, handling in separate accounts school funds of the district, the question as to whether such trustees and such accounts may be audited by the State Auditing Department is pertinent. In this connection your attention is called to Section 233, Compiled General Laws of Florida, 1927, which makes it the duty of the State Auditor and his assistants to audit all State and County offices. Section 235 of the same compilation authorizes the Governor to direct any one or more of the Auditors "to audit the office, books and records of any County, of any State or county officer,* * *." No specific authorization appears for the auditing of special tax school districts, district trustees or their books and records unless they are to be considered State or county officers. A search of authorities reveals very little light on this subject. Attention is called to 22 R.C.L. 388, Public Officers, 21, and also: In the matter of the Executive Communication, 13 Fla. 687.

Your particular attention is directed to the language of Section 235, above mentioned, which provides for the audit of the *office, books and records* as well as the audit of *officers* provided for under Section 233. In my view the purpose of the statute providing for audits was not only for the audit of officers but more particularly the public records and funds in the hands of such officers.

In view of the foregoing it is my opinion that when trustees of special tax school districts in fact are handling public school funds in separate accounts, which should properly be handled through the regular County depository, such accounts and the books and records pertaining thereto are subject to audit by the State Auditing Department and the trustees for such purpose may be considered County officers. Your inquiry, therefore, should in my opinion be answered in the affirmative.

SPECIAL TAX SCHOOL DISTRICT

September 16, 1938.

BONDS—BOARD CANNOT DIVERT FROM PURPOSE CONTEMPLATED
BY SECTION 17, ARTICLE XII, CONSTITUTION*Dear Sir:*

I acknowledge receipt of your letter of September 15, to which you attach a letter received by you from Superintendent * * *, requesting my opinion on the question raised by Mr. * * *. Mr. * * * in his letter states:

"Sanford school district is trying to get a PWA project for a negro school in Sanford costing approximately twenty thousand dollars, of which amount, as you know, this district must furnish fifty-five per cent. This district holds in its interest and sinking fund five one thousand dollar bonds of another district, said bonds having been given to the district by the defunct First National Bank, of Sanford, Florida, in part payment of the claim of Sanford School District Interest and Sinking account, deposited in that bank at the time of its failure. If we can use these five bonds as a part of the sponsor's contribution to the PWA project it will accrue to the advantage of the district,—the district's finances being at present inadequate to meet its fifty-five per cent of the PWA project cost." Section 17 of Article XII of the Florida Constitution provides:

"Whenever any such special tax school district has voted in favor of the issuance of such bonds a special tax for the payment of the interest on said bonds and the principal thereof as the same shall become due and payable, shall be levied on the taxable property within the district voting for their issuance in accordance with law, providing for the levy of taxes *and such tax shall not be applied to any purpose other than the payment of the principal and interest of said bonds.*

The County School Board is authorized to invest funds in the interest and sinking fund in certain classes of bonds. When these bonds are purchased they must be held under the same terms as the money received from the taxes in question is held, that is, to be used solely for the payment of the principal and interest of the said bond issue.

Regardless of the desirability of the use of these bonds as a contribution to the PWA project, it is my opinion that under the Constitution of this State, such diversion of these bonds from the purposes contemplated by Section 17 of Article XII of the Constitution would be illegal.

SPECIAL TAX SCHOOL DISTRICT

February 15, 1938.

BONDS OF SPECIAL TAX SCHOOL DISTRICT NO. 23, BAY SPRINGS,
ESCAMBIA COUNTY—ISSUE OF JULY 1, 1937*Dear Sir:*

You have requested my opinion as to the validity of an issue of bonds of Special Tax School District No. 23, Bay Springs, of Escambia County, Florida, dated July 1, 1937, in the aggregate amount of \$10,-000.00. You request my opinion in connection with the proposed purchase of half of this issue by the State Board of Education as an investment of the Permanent School Fund.

The Superintendent of Public Instruction of Escambian County, * * *, has furnished a certified transcript of the proceedings in the case of Board of Public Instruction of the County of Escambia, State of Florida, and the Trustees of Special Tax School District No. 23, Bay Springs, of said County, Petitioners, vs. The State of Florida, Respondent, which was the proceeding instituted in the Circuit Court of the First Judicial Circuit of Florida, in and for Escambia County, validating the issuance of said bonds. It would appear from this certified transcript that the statutes of Florida relating to the institution and prosecution of validation proceedings were substantially complied with. It would further appear that the Constitutional and statutory provisions relating to the issuance of special tax school district bonds were also substantially complied with.

It would further appear from the certified transcript that the Circuit Court in and for Escambia County, Florida, made and entered a decree validating said bond issue, which decree was signed by L. L. Fabisinski, Circuit Judge, on the 29th day of July, A. D. 1937, and recorded among the public records of Escambia County, Florida, in Chancery Order Book 21 at page 494 thereof.

It is my opinion, predicated upon the certified transcript of the record which the said Superintendent of Public Instruction of Escambia County has furnished, that said bonds are valid and enforceable obligations of said Special Tax School District.

February 15, 1938.

BONDS OF SPECIAL TAX SCHOOL DISTRICT NO. 19 OF ESCAMBIA
COUNTY—ISSUE OF JULY 1, 1937*Dear Sir:*

You have requested my opinion as to the validity of an issue of bonds of Special Tax School District No. 19, of Escambia County, Florida, dated July 1, 1937, in the aggregate amount of \$10,000.00. You request

SPECIAL TAX SCHOOL DISTRICT

my opinion in connection with the proposed purchase of half of this issue by the State Board of Education as an investment of the Permanent School Fund.

The Superintendent of Public Instruction of Escambia County, Honorable J. H. Varnum, has furnished a certified transcript of the proceedings in the case of Board of Public Instruction of the County of Escambia, State of Florida, and the Trustees of Special Tax School District No. 19, of said County, Petitioners, vs. The State of Florida, Respondent, which was the proceeding instituted in the Circuit Court of the First Judicial Circuit of Florida, in and for Escambia County, validating the issuance of said bonds. It would appear from this certified transcript that the statutes of Florida relating to the institution and prosecution of validation proceedings were substantially complied with. It would further appear that the Constitutional and statutory provisions relating to the issuance of special tax school district bonds were also substantially complied with.

It would further appear from the certified transcript that the Circuit Court in and for Escambia County, Florida, made and entered a decree validating said bond issue, which said decree was signed by L. L. Fabisinski on the 29th day of July, A. D. 1937, and was thereafter recorded among the public records of Escambia County, Florida.

It is my opinion, predicated upon the certified transcript of the record which the said Superintendent of Public Instruction of Escambia County has furnished, that said bonds are valid and enforceable obligations of said Special Tax School District.

August 15, 1938.

**COMPUTING STATUTORY INTEREST ON JUDGMENTS FOR
SCHOOL BONDS**

Dear Sir:

This is in reply to your letter of August 9th enclosing copy of a letter to you * * *. You request my opinion concerning the proper method of computing interest at statutory rates on judgments obtained on school bonds rendered prior to July 1, 1933.

Prior to July 1, 1933, Section 4493, Compiled General Laws of Florida, 1927 (Sec. 2806, R.G.S.), provided that all judgments should bear interest at the rate of 8 per centum per annum. Section 4493, Compiled General Laws of Florida, 1927, was amended by Chapter 16,051, Acts of 1933, and as amended provided that all judgments should bear interest at the rate of 6 per centum per annum, except that when the

SPECIAL TAX SCHOOL DISTRICT

judgments were obtained on a written contract providing for a lesser rate of interest, the judgment should bear the lesser rate of interest.

Chapter 16,835, Laws of Florida, Acts of 1935, fixed the rate of interest on judgments rendered on bonds of a taxing district at 5 per centum, except that the interest rate should be that provided for in the bond if that amount is less than 5 per centum. The title of Chapter 16,835 indicates an intent of the Legislature to limit the effect of said Act to judgments or decrees "hereinafter obtained or rendered," although the body of the Act contains no such specific limitation.

The following is from 15 R.C.L., page 20:

"* * * With regard to judgments, while there are decisions which apply to them the general rule denying in the case of contracts a retroactive effect to statutes changing the rate of interest, the weight of authority is to the effect that a statute changing the rate of interest payable on judgments will apply retroactively to judgments previously rendered. The theory upon which this view is based is that the interest on the judgment is not a matter of contract between the parties, but is an obligation implied or imposed by law and that accordingly the right to receive such interest depends entirely upon what the state chooses to prescribe."

It is my opinion that Chapter 16,051, Acts of 1933, has the effect of reducing the rate of interest on judgments rendered prior to its enactment. It is further my opinion that Chapter 16,835, Acts of 1935, does not reduce the rate of interest on judgments described therein rendered prior to its passage. The title of an Act may be considered in determining the legislative intent. See: *Curry vs. Lehman*, 47 So. 18, and *State vs. Yeats*, 77 So. 262.

Answering your particular inquiry, the judgments rendered prior to July 1, 1933, bear interest at the rate of 8 per cent. per annum until that date and 6 per cent. thereafter. Judgments on school bonds rendered after July 1, 1935, bear interest at the rate of 5 per cent. or less, as hereinabove stated.

April 3, 1937.

**CONSOLIDATION OF DISTRICTS AS AFFECTING BONDED INDEBT-
EDNESS—ENFORCIBILITY OF CONTRACT OBLIGATIONS OF
SCHOOL BOARD**

Dear Sir:

This is in reply to your letter of March 31st enclosing letter from D. C. Palmer, Principal of the Chiefland High School.

SPECIAL TAX SCHOOL DISTRICT

You first request my opinion as to whether or not a special tax school district resulting from the consolidation of several special tax school districts is liable for the bonded indebtedness of all of said special tax school districts so consolidated. This question is answered very clearly in Section 751, Compiled General Laws of Florida, 1927, which reads as follows:

"When two or more special tax school districts shall be consolidated as authorized by the provisions of this law, the entire consolidated district shall become liable for the payment of all bonds and other indebtedness of each of the districts so consolidated, and the entire area of the consolidated district shall be subject to be taxed for the payment thereof. The consolidated district shall become entitled to all of the funds and property of the districts consolidated."

You next request my opinion as to whether or not there is any way of forcing the school board to pay its entire obligations even when the contract reads: "if funds are available." If the contract obligations are valid it is the duty of the school board to make provision for their payment. This duty will be enforced by the court in litigation instituted for that purpose. In many instances the court will require payment to be spread over perhaps a period of years but they will require ultimate payment.

June 22, 1938.

**ELECTIONS—SECTION 704 C.G.L. PROVIDE PUBLICATION
OF NOTICE BY BOARD**

Dear Sir:

This is in reply to your letter of June 13th enclosing copy of a letter from Superintendent J. A. Jamison, of Stuart, Florida.

You request my opinion as to whether or not a County Board of Public Instruction may, in the interest of economy, post notices of a special tax school district election instead of publishing same in a newspaper when there is a newspaper published in the County. It is my opinion that under the provisions of Section 704, Compiled General Laws of Florida, it is the mandatory duty of the Board of Public Instruction to public the notice in a newspaper when there is a newspaper in the County. To do otherwise would be to disregard the mandatory requirements of the statute and possible invalidate the election.

SPECIAL TAX SCHOOL DISTRICT

July 15, 1938.

ISSUANCE OF SPECIAL TAX SCHOOL DISTRICT BONDS

Dear Sir:

You request my opinion on a problem presented by Mr. C. W. Peters, attorney for the Board of Public Instruction of Dade County.

Briefly stated, it appears that at an election held on June 12, 1934, in Special Tax School District No. 14 of Dade County, the issuance of bonds in the amount of \$700,000 was approved, for the purpose of purchasing school sites, erecting and furnishing school buildings, and improving school grounds. These bonds were issued for the purpose of providing the District's share of a PWA project, thirty per cent of which was to be furnished by the Federal Government, as an outright grant. Only \$529,000 of said bonds were actually issued, and were purchased by the Government. In the case of *State vs. Special Tax School District No. 14 of Dade County*, 161 So. 410, the issuance of said bonds, in the amount of \$529,000, was approved.

It is now proposed to issue the remaining \$171,000 of bonds, the proceeds of the sale to be used within the purview of the advertised Statement of Purposes contained in the notice of the special election above referred to.

The letter of Mr. Peters states, in part, the following:

"It was generally understood by everybody at the time said bond election was held on June 12, 1934 that only such part of the whole issue as should be necessary to carry out the loan and grant agreement would be issued and sold and that the debt to be thus created would be restricted to that amount."

The determination of the problem must largely depend on the factual situation. If the proceeds of the bonds proposed to be issued at this time, are to be expended for the *specific purposes* referred to in the petition for issuance of the bonds, the resolution calling an election, the notice of election, the resolution authorizing the issuance of bonds, and the final decree approving the validity of such bonds, then it is my opinion that said bonds may properly be issued. If, however, the proceeds are to be used for other purposes, even though similar to the purposes outlined in the original proceedings leading up to the approval of the bond issue, then it is my opinion that the issuance of such bonds, at this time, would constitute a new and separate issue, and would require another election.

Inasmuch as the specific school sites and buildings to be erected, et cetera, are set forth and described in the resolution authorizing the issuance of said bonds, it would not be difficult to ascertain whether or not the proceeds of the bonds now proposed to be sold, are to be used

SPECIAL TAX SCHOOL DISTRICT

for such purposes as would authorize their issuance in accordance with the opinion which I have hereinabove expressed.

October 13, 1938.

**LIABILITY FOR A SPECIAL ASSESSMENT UPON STREET
IMPROVEMENT LIEN**

Dear Sir:

I have your letter of October 10th requesting an opinion upon the question raised in the letter you enclosed * * * as follows:

Is the Ocoee Special Tax School District No. 6 of Orange County liable for a special assessment upon a street improvement lien for streets that were built several years ago by the City around the school buildings?

It is contended that since some of the freeholders that reside in the district some distance from the city limits and therefore had no voice in the election held to authorize this improvement, that such freeholders should not be required to participate in paying for the streets.

From the examination I have made of the authorities, the question does not turn upon this proposition, but the sole question seems to be whether or not the Legislature authorized an assessment of the character mentioned. For your information I will quote from the case of *Blake, et al, Consolidated Special Tax School District Trustees, vs. City of Tampa*, 156 So. 97:

"We hold therefore as follows: That notwithstanding the provision of the several sections of Article 12 of the Constitution of Florida relating to schools and the public school funds, that property acquired and used for public school purposes, owned within the jurisdiction of a municipality by a special tax school district under the Constitution and laws of Florida, may, by a duly enacted statute expressly so providing, be lawfully incumbered with a lien for a special or local assessment authorized to be imposed by the municipality for the abutting property's fair proportionate part of the cost of grading, paving, and curbing a street upon which such school property abounds, but that, in view of the sacred constitutional trust character in which such school property is authorized and required to be held, kept, and used by the school authorities, it is not within the constitutional power of the Legislature to provide for the enforcement of any such special or local assessment lien by execution, levy, or decretal sale on foreclosure to satisfy said lien, even though duly imposed, because to do so would tend to destroy the constitutional trust upon which all school property is owned and held, and is required by the Constitution to be employed."

SPECIAL TAX SCHOOL DISTRICT

Since the letter in question did not state under what Act the improvement was made, I cannot more specifically answer his question than I have by the quotation from the above case. As a practical matter, it would take another Act of the Legislature to authorize the payment of any assessment against this property, for in this same case, the Court also held:

"But we further hold that the authority given under the Constitution to a school district to purchase, own, hold, and use real property for school purposes, and to expend special tax school district funds thereon, is subject to legislative direction and control within the scope of the special constitutional school purposes, and that the Legislature by a specific enactment so providing, may authorize and direct the expenditure of a part of the public school funds for the purpose of paying off and discharging lawfully imposed incumbrances upon school properties, imposed thereon by reason of special or local assessments for street improvements when not in excess of the benefits conferred thereon as determined pursuant to law, but that, in the absence of any such special legislative authority and direction, the trustees of a special tax school district have no right or authority to expend school funds for such purposes, except from the proceeds of the sale of the incumbered property itself if, in the course of events, the same should be abandoned for school purposes and disposed of, in which last-mentioned events the purchase price received would be deemed to consist in part of the amount necessary to discharge the incumbrance on what is sold."

I believe from what I have said above and the quotations given that you will be able to determine what should be done in the matter.

August 27, 1938.

PAYMENT OF ATTORNEY'S FEES FOR SERVICES RENDERED TO TRUSTEES UNDER CHAPTER 18743, ACTS OF 1937

Dear Sir:

This is in reply to your letter of recent date enclosing copy of a letter to you from Mr. Judson B. Walker, County Superintendent of Public Instruction of Orange County.

Under the Orange County Teacher Tenure Act, Chapter 18743, Laws of Florida, Special Acts of 1937, Section 5, Special Tax School District Trustees as well as the County Superintendent of Public Instruction are authorized to file charges against teachers seeking their discharge or demotion on grounds set forth in Section 4 of said Act. Such charges are filed with the County Board of Public Instruction which conducts a public hearing for the presentation of evidence concerning such charges.

SPECIAL TAX SCHOOL DISTRICT

It is provided in Section 6 of the Act that the ruling of the County Board may be reviewed on certiorari by the Circuit Court.

You request my opinion as to whether or not the School District Trustees may retain an attorney to assist them in preparing and prosecuting such charges. This is a matter which is discretionary with the County Board for under Section 717, Compiled General Laws, no debt may be created without the approval of the County Board. See *Pennock vs. State*, 54 So. 1004. If in the opinion of the County Board it is necessary for the Trustees to employ an attorney in order to properly perform their duties under Chapter 18743 the expenditure will be a proper one.

You next request my opinion as to whether such attorneys should be compensated from the Special Tax School District funds or the General County School Fund. It is my opinion that payment must be made from Special Tax School District funds. See *Board of Public Instruction for Pinellas County vs. Knight and Wall Company*, 132 So. 644.

The standard form of school budget makes no provision for such expenditures. Provision is made, however, in Section 17 of Chapter 18134, Laws of Florida, Acts of 1937, for the amendment of such budgets. The conditions stated in Section 17 must, of course, be complied with.

February 7, 1938.

PAYMENT OF EXPENSES OF SCHOOL DISTRICT TRUSTEES TO MEETINGS OF EDUCATION ASSOCIATIONS

Dear Sir:

This is in reply to your letter of February 4th in which you request my opinion as to whether public school funds may be used to defray the expenses of school district trustees in attending meetings of the Florida and National Education Associations.

I do not find any statute which would either directly or by implication authorize such expenditure. Such an expenditure does not come within the list of those recognized by the Supreme Court as being proper in its opinion in the case of *Board of Public Instruction of Okaloosa County vs. Kennedy*, 147 So. 250, text page 253.

May 17, 1937.

PUBLICATION OF NOTICE OF ELECTIONS

Dear Sir:

This is in reply to your inquiry as to whether or not when several tax school district elections in a County occur on the same date it would be sufficient to publish just one notice referring to all of such elections.

SPECIAL TAX SCHOOL DISTRICT

While it is my opinion that one notice might be sufficient, I believe that the better policy would be to publish separate notices. One notice referring to several elections would tend to be confusing and very little saving would be had in the cost of publication if the combined notice were made sufficiently complete to comply with the purposes of the statute.

December 30, 1937.

**PUBLICATION OF NOTICE OF SALE OF SCHOOL DISTRICT BONDS
UNDER SECTION 727, C.G.L.**

Dear Sir:

Mr. J. H. Varnum, Superintendent of Public Instruction, and Mr. W. B. Strickland, Chairman of the School Board, of Escambia County, discussed with me at some length a matter which I understand they have also taken up with you. The question is whether it is necessary to publish a notice fixing a date for receiving bids for school district bonds after one such notice has been published and no bids were received.

This question involves the construction of Section 727, Compiled General Laws of Florida, which reads as follows:

"RECEIVING BIDS AND SALE OF BONDS.—In case the issuance of bonds shall be authorized by the said election, the county board of public instruction shall cause notice to be given by publication in some newspaper published in the said county, that said county board will receive bids for the purchase of said bonds at the office of the superintendent of public instruction of said county, on or before the expiration of thirty days from the first publication of said notice. Such notice shall specify the amount of bonds offered for sale, the rate of interest and the time when the principal and installments of interest shall be due and payable, and any or all bids may be rejected by the board if they deem it for the interest of said district so to do, and they may cause a new notice to be given in like manner inviting other bids for said bonds. Said bonds shall be disposed of to the highest bidder. (Ch. 6542, Acts 1913, § 8.)"

It is my opinion that it is necessary to publish another notice. If for any reason the bonds are not sold as a result of the publication of the first notice that becomes a completed transaction, leaving the matter exactly as though no notice were published. We may assume that if no bids were submitted in response to the first notice there is no present market for the bonds. If the market should improve in the future we may also assume that more than one party may be interested in purchasing the bonds and the legislative intent expressed in Section 727 would require a new notice to be published affording the school districts the benefit of competitive bidding.

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August 24, 1938.

**PURPOSE FOR WHICH PROCEEDS OF SCHOOL DISTRICT
BONDS MAY BE USED***Dear Sir:*

This is in reply to your letter of August 18th in which you enclosed copies of correspondence between your office and Mr. Lincoln C. Bogue.

It would appear that several years ago Special Tax School District No. 15 of Pinellas County voted a bond issue and it was the general understanding that the proceeds would be used for the purpose of building a school at Rio Vista. The building was partially constructed and it now develops that it is not needed. There are still funds on hand derived from the sale of said bonds in the amount of approximately \$25,000.00. You request my opinion as to whether this balance may now be used in conjunction with a grant of Federal funds in constructing an auditorium in another school building situated in District 15.

It appears from a copy of the resolution calling the bond election hereinabove referred to that the bonds were to be issued for the "purpose of building, equipping and furnishing public school buildings within said district." The purpose therein expressed would seem to authorize the expenditure of the proceeds in constructing an auditorium in another school building located in the district. Unless some contrary purpose is disclosed by the official records made in connection with this bond issue it would be my opinion that the proceeds may be expended in the manner proposed.

March 12, 1937.

**QUALIFICATION OF ELECTORS IN ELECTIONS CREATING
DISTRICTS, ELECTIONS CONSOLIDATING DISTRICTS
AND OTHER DISTRICT ELECTIONS***Dear Sir:*

In view of the various questions which have arisen concerning the three types of elections above referred to and which are provided for in the First Division, Title V, Chapter 1, Article 8 of the Compiled General Laws of Florida, 1927, I have decided to consolidate in this opinion a statement of the statutory qualifications of electors in such elections.

To begin with, the qualifications of electors in each of the three types of elections above referred to are the same. In regard to the creation of districts Section 707, Compiled General Laws, 1927, and Section 707 (1) Compiled General Laws, Supplement apply. In regard to the consolidation of districts, Section 749, Compiled General Laws adopts the same qualifications as for the creation of districts. The qualifications

SPECIAL TAX SCHOOL DISTRICT

of electors in regular tax school district elections are, by virtue of Section 708, Compiled General Laws, also the same as those prescribed for elections creating districts. Therefore, I find the situation to be that the qualification of electors in all such elections are prescribed in Section 707, Compiled General Laws of Florida, 1927 and Section 707 (1), Compiled General Laws of Florida, Supplement.

Under said last named sections the following are the qualifications of persons authorized to vote in the special tax school district elections above referred to:

First. Residence Requirement—To be authorized to vote in such elections persons must reside within the district, or within the territory sought to be established as a district or within one of the districts sought to be consolidated.

Second. Registration—In addition to the foregoing requirement, a person must have been qualified to vote in the general election next preceding the date of holding any of the special tax school district elections hereinabove referred to. While Section 707 (1), Compiled General Laws, Supplement, uses the words "voted in the general election," I construe the legislative intent to be that those who were *qualified* to vote are equally eligible with those who voted. No further registration is required other than general County registration. See the case of *Pickett vs. Russell*, 42 Fla. 116. (In such counties as keep their registration books open the year around persons may register on the general registration books of the County at any time up to the second Saturday of the month preceding the date of the election. The basis for this is Section 706, Compiled General Laws, which provides special school tax elections shall be held and conducted in the manner prescribed by law for holding general elections except as otherwise provided. In such special instances poll taxes must be paid as required by the general law. This requirement, however only applies to those who register after the last general election.)

Third. Payment of Taxes on Real or Personal Property—In addition to the foregoing requirements a person must have *paid* a tax on real or personal property within the district. This means only he must have paid some taxes but not necessarily all the taxes which he may have owed. Section 706, Compiled General Laws of Florida, 1927, provides for the preparation of a list of persons conforming with this requirement. Section 706 reads as follows:

"All special tax school district elections shall be held and conducted in the manner prescribed by law for holding general elections, except as provided in this Article, and it is hereby made the duty of the supervisor of registration of any county, to furnish upon payment for such service to the county board

SPECIAL TAX SCHOOL DISTRICT

of public instruction, on demand, a certified list of the qualified voters residing in a special tax school district, or the territory to be created into a special tax school district, that have paid a tax on personal or real property for the year next preceding any such special tax election."

Only those persons whose names are properly placed on the foregoing list in accordance with said Section 706 are qualified to vote.

The test of whether or not a particular person is qualified to vote in the elections herein referred to is whether or not he possesses *all* of the qualifications hereinabove set forth.

Provision is also made for elections to determine whether or not bonds shall be issued. Section 723, Compiled General Laws of Florida, 1927, provides that only the duly qualified electors of the district *who are freeholders* shall vote. In addition to the requirements hereinabove set forth for voters participating in tax school district elections generally, the voters seeking to participate in an election to determine whether bonds shall be issued must also be freeholders. Under the provisions of Article IX, Section 6 of the Florida Constitution as amended, a majority of the freeholders who are qualified electors of the district must participate in such elections in order to make such elections valid.

For the sake of completeness I have decided to include in this opinion the effect of tax exemptions on the qualifications of electors in all the various types of elections under consideration. In bond elections, if a person, otherwise qualified, owns real property in the district but pays no tax thereon by reason of the so-called homestead exemption provision in the State Constitution, or by reason of any other exemption from taxation, he is qualified to vote in such elections. Likewise in the other elections under consideration, if a person is exempt from payment of taxes on all his real or personal property in the district for any reason whatsoever, this does not disqualify him from voting and the Supervisor of Registration should place his name on the list provided for in Section 706, Compiled General Laws of Florida.

June 16, 1937.

REMOVAL AND APPOINTMENT OF TRUSTEES

Dear Sir:

This is in reply to your letter of June 4th in which you enclosed copy of letter from Mr. Willis Pitts, of Frink, Florida. You request my opinion as to who has authority to remove trustees for cause. You further request my opinion as to who has authority to appoint trustees to fill vacancies.

These questions are both answered in the opinion of the Supreme Court in the case of State ex rel. Landis vs. Blake, reported in 110 Fla.

SPECIAL TAX SCHOOL DISTRICT

178, 148 So. 566. This case holds that under the provisions of Article XII, Section 3 trustees of a special tax school district are subordinate school officers, subject to removal by the State Board of Education for cause. The opinion of the Court upholds the authority of the County Board of Public Instruction to appoint trustees to fill vacancies under the provisions of Section 709, Compiled General Laws of Florida, 1927.

August 7, 1937.

RESIGNATION OF TRUSTEE—TO WHOM MADE

Dear Sir:

This is in response to your request for an opinion on the above subject.

Section 709 of the Compiled General Laws of Florida, 1927, empowers the county school board to fill all vacancies occurring from any cause in the board of trustees of a special tax school district, and this provision has been upheld by the Supreme Court of Florida, in *State, ex rel., Landis, Attorney General vs. Blake*, 110 Fla. 178, 148 So. 566. Hence, it is my opinion that the resignation of a trustee of a special tax school district, should be addressed to the County Board of Public Instruction.

February 17, 1937.

**SCHOOL AUDITORIUM—TRUSTEES NOT AUTHORIZED TO RENT,
BOARD PUBLIC INSTRUCTION VESTED WITH AUTHORITY**

Dear Sir:

This is in reply to your letter of February 11th in which you request my opinion as to the authority of the trustees of a special tax school district to make a charge for the use of a school auditorium for non-school functions.

The following is from the opinion of the Supreme Court of Florida in the case of Trustees of Special Tax School District No. 1 of Leon County vs. Lewis, reported in 57 So. Reporter, page 614:

"PER CURIAM. This appeal is from an order granting a temporary restraining order enjoining the use of the auditorium in a public school building in the special tax school district by private parties for entertainments, such as exhibitions of moving pictures, etc., under a contract made with the trustees of the special tax school district.

"The title to the land and the building is vested in the board of public instruction of the county, and the statutory authority of the trustees of the special tax school district with

SPECIAL TAX SCHOOL DISTRICT

reference to schools in the district is not of control, but of supervision only, and does not include a right in the trustees to make the lease of the school property of the county involved in this controversy. No authority in the trustees to make the lease is made to appear. See *Special Tax School District vs. Dade County Board*, 61 Fla. 798, 54 South. 265."

In view of the decision of the Supreme Court above referred to, it is my opinion that the trustees do not have authority to make such a charge for the use of a school auditorium. Arrangements to rent a school auditorium would have to be made with the County board of public instruction rather than with the trustees of the tax school district. A charge for the use of the auditorium for non-school purposes should be made in an amount at least sufficient to defray expenses incident to the use of the building for such purposes. Otherwise school funds would be used for other than school purposes, contrary to the provisions of Article XII, Sections 9 and 10 of the Florida Constitution.

October 14, 1937.

**TRANSFER OF FUNDS UNDER CHAPTER 18134, LAWS OF
FLORIDA, ACTS OF 1937**

Dear Sir:

This is in reply to your letter of October 11th, enclosing copy of letter and resolution from Superintendent Neil D. Blue of Chipley, Florida.

You request my opinion as to the question raised in the letter and resolution.

It appears that Special Tax School District No. 2 of Washington County has a balance of \$921.00 in the sinking fund of an issue of bonds that has been fully paid. The Board of Public Instruction desires to pay this amount on a bond of another issue of the same school district. In my opinion this would be permissible and could be accomplished by a transfer of the funds from the sinking fund of the first issue of bonds to the sinking fund of the other issue with the approval of the State Superintendent of Public Instruction under the provisions of Section 21 of Chapter 18134, Laws of Florida, Acts of 1937. The amount could then be applied in payment of the balance due on the bond of the second issue.

The resolution, as submitted, would not be proper to accomplish the purpose above outlined, because there is no longer any reason to perpetuate the sinking fund of the first issue of bonds which has been fully paid.

SECTION 3

SCHOOLS—MISCELLANEOUS

December 12, 1938.

AUTHORITY OF BOARD OF MANAGERS TO PAROLE INMATES, AND
AUTHORITY TO REFUSE PERSONS SENTENCED TO
INDUSTRIAL SCHOOL FOR BOYS*Dear Sir:*

In answer to your letter of November 29, enclosing a letter from Honorable John L. Moore, Judge of the Criminal Court of Record of Palm Beach County, in which Mr. Moore inquires as to the power of the Board of Managers of the Florida Industrial School for Boys to parole a minor whom he has sentenced to the School for a definite period of years before the term of defendant has expired; and also inquiring whether or not the Industrial School has the right to refuse to accept minors whom he sentences to that School on the ground that the School is overcrowded and has no room for them, I would state:

In answer to the first inquiry, Sections 8637 and 8645 provide as follows:

"The board of managers shall institute a system of merits and demerits in the department of the inmates of said school, and shall when deemed advisable parole boys, subject to conditions prescribed by the said board. (Ch. 6529, Acts 1913, § 5.)"

"When any boy shall be committed by the judge of any court in the State of Florida to the Florida Industrial School for Boys said commitment shall be for such period as the committing judge shall deem proper, or until he shall reach his majority, or unless discharged earlier by the board of managers as reformed. (Ch. 5388, Acts 1905, § Ch. 5915, Acts 1909, § 3; Ch. 6916, Acts 1915, § 5, as amended by Ch. 7377, Acts 1917, 1.)"

Under these two provisions of the Act it is my opinion that the Board of Managers does have the right to parole an inmate of the School before his sentence expires, if they find that the inmate has reformed.

In answer to the second inquiry, I would state that Section 8647 provides as follows:

"When a child is sentenced to said school, and the board of commissioners of State institutions deem it inexpedient to receive him or he is found incorrigible, or his continuance in the school is deemed injurious to its management and discipline,

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they shall certify the same upon the mittimus upon which he is held, and the mittimus and convict shall be delivered to any proper officer who shall forthwith commit such child to the jail, or State Prison, according to his alternative sentence. The board of commissioners of State institutions may discharge any child as reformed; and may authorize the superintendent, under such rules as they prescribe, to refuse to receive any person sentenced to said school, and his certificate thereof shall be as effectual as their own. (Ch. 5388, Acts 1905, § 4.)"

Under this Section of the law the Board of Commissioners of State institutions may refuse to accept a minor at this School when they deem it inexpedient to accept him. You will also see under this Section that the Board of Commissioners may discharge any child from said institution as reformed.

November 22, 1938.

BOOK STORES—MAINTENANCE OF, NOT VIOLATION OF SECTION 25 OF CHAPTER 18133, ACTS OF 1937

Dear Sir:

This is in reply to your letter of November 3rd.

You refer to a letter received by you from the attorney for the Orange County Board of Public Instruction which reads in part as follows:

"The school board of our county maintains a book store in one of the school houses and permits the gentleman in charge to buy and sell books there, both state adopted books and other books. All of the profits of the enterprise are carried in a special account by the school board and the proceeds used to pay the salary of the person who runs the book store and the surplus used to pay the janitors salary or for other expenses of the public. No person except the keeper of the book store makes any profit on the business and his only profit is his salary which is reasonable.

"It has been suggested that this may be a violation of Section 25 of House Bill No. 955, 1937. If your department is of this opinion kindly advise us so that we can conform."

Section 25 of House Bill No. 955 hereinabove referred to is incorporated as Section 25 in Chapter 18133, Laws of Florida, Acts of 1937. That section reads as follows:

"PENALTY FOR SCHOOL OFFICERS DEALING IN TEXT-BOOKS.—No Superintendent of Public Instruction, School Board Member, or any person officially connected with the government

SCHOOLS—MISCELLANEOUS

of or direction of public schools, or teachers thereof, shall receive any private fee, gratuity, donation or compensation in any manner whatsoever, for promoting the same or exchange of any school book, map or chart in any public school, or be an agent for the sale, or the publisher of any school textbook, or be directly or indirectly pecuniarily interested in the introduction of any such textbooks, and any such agency or interest shall disqualify any person so acting or interested from holding any school office whatsoever, and the person so offending shall be fined in the sum not exceeding one hundred dollars, or imprisoned not more than thirty days, provided that this section not be construed as preventing the adoption of any book written in whole or in part by a Florida author."

It is my opinion that the maintenance of a book store in the manner hereinabove described does not violate Section 25 of Chapter 18133, Laws of Florida, Acts of 1937, which said section is the only section of said statute appearing to have any bearing on the question.

November 10, 1938.

COMMITTEE ON REVISION AND CODIFICATION OF SCHOOL LAWS—
APPROPRIATION FOR PER DIEM AND EXPENSES—
CHAPTER 18136, ACTS OF 1937

Dear Sirs:

You jointly request my opinion as to whether the members of the Legislative Committee heretofore appointed pursuant to Section 4 of Chapter 18136, Laws of Florida, Acts of 1937, are entitled to per diem and expenses for attending meetings of the Committee for the purpose of considering and carefully checking the provisions of the school code, the preparation of which is authorized under said statute.

Section 6 of Chapter 18136 reads as follows:

"The members of this committee shall be paid a per diem of ten dollars (\$10.00) per day while actually engaged in the work of the committee and in addition they shall also receive their actual expenses, and such per diem and expenses shall be paid as an item of legislative expense and a sum sufficient to pay these matters is hereby appropriated out of the general fund of the State. The Comptroller shall draw his warrant, which shall be countersigned by the Governor, upon the Treasurer for the amount of the per diem and actual expenses of the members of the committee, upon vouchers and regular expense accounts being furnished him for such per diem and expenses, and the Treasurer shall pay these warrants when presented."

SCHOOLS—MISCELLANEOUS

Under the provisions of said Chapter 18136 there is a specific appropriation for per diem and expenses of members of the Committee. Warrants for payment may be drawn at any time after vouchers and regular expense accounts have been properly submitted by committee members. The expenses are subject to the limitation contained in Section 1 of Chapter 16184, Acts of 1937, to-wit, not exceeding five cents per mile for travel by private automobile and \$4.50 a day for subsistence.

July 18, 1938.

**COMPENSATION OF PRINCIPALS REINSTATED BY COURT ORDER
IN ABSENCE OF SPECIFIC CONTRACT**

Dear Sir:

From your letter and enclosures it would appear that Mr. E. W. Carter was nominated by the trustees but rejected by the Board of Public Instruction of Pasco County for the position of principal of Pierce Grammar School. In proceedings instituted in the Supreme Court of Florida the right of Mr. Carter to have been appointed to that position was judicially determined. In compliance with the peremptory writ Mr. Carter was reinstated for the remaining two weeks of the 1937-38 school term.

You request my opinion as to whether or not Mr. Carter is entitled to the same salary he received in the same position during the 1936-37 school term or whether he is entitled only to the amount received by his successor during the 1937-38 term.

It is apparent that there was no actual contract entered into between the School Board and Mr. Carter. The decision of the Supreme Court in effect said that there should have been such a contract. It is obvious that the County Board should not now be permitted to specify a rate of compensation less than that received by Mr. Carter's successor. It is just as obvious that the County Board would not be justified in specifying any fixed compensation in excess of that received by the successor. It would seem, therefore, that the only evidence upon which the parties could rely in now fixing the rate of compensation was the compensation actually paid to the successor for the same type of work.

December 16, 1938.

**CONTRIBUTION OF COUNTY SCHOOL FUNDS FOR CONSTRUCTION
OF COMMUNITY RECREATION BUILDING**

Dear Sir:

You request my opinion as to whether or not a County Board of Public Instruction may legally make a contribution of county school

SCHOOLS—MISCELLANEOUS

funds for the purpose of defraying a part of the cost of a community recreation building.

It is my opinion that county school funds may not be expended for this purpose. I call your attention to the following language contained in the opinion of the Supreme Court of Florida in the case of McKinnon vs. State, 70 So. 557:

"The Constitution provides that 'the county school fund * * * shall be disbursed by the county board of public instruction solely for the maintenance and support of public free schools.' Section 9, Art. 12. And the school subdistrict taxes are 'for the exclusive use of public free schools within the district.' Section 10, Art. 12.

"The school funds under our Constitution are to be regarded as a sacred trust; and the provisions of law safeguarding expenditures from such funds should be strictly construed, and the mandate of the Constitution enforced. See Pennack vs. State ex rel. Hood, 61 Fla. 383, 54 South, 1004."

I also call your attention to the case of Leonard vs. Franklin, reported in 93 So., page 688, in which the Supreme Court of Florida declared invalid a statute authorizing the payment from county school funds of principal and interest on warrants issued to raise money to build and equip high school buildings in special tax school districts.

January 27, 1938.

COUNTIES RATHER THAN SCHOOL DISTRICTS AS UNITS OF
DISTRIBUTION OF SCHOOL FUNDS BY STATE

Dear Sir:

You request my opinion as to whether or not it is required that the amount of the Teachers' Salary Fund apportioned according to law to a county be allotted to and spent in a particular school or district in proportion to the number of instruction units in said school or district, without regard to the funds which may be available for such school or district from other sources. This question has been raised in a school district in Miami Beach. If this district were to receive the amount of the full State contribution for the number of instruction units in the district it would have considerable amounts available from district taxes for construction purposes.

The above inquiry must be answered in the negative. While under the provisions of Section 4 of Chapter 14829, Laws of Florida, Acts of 1931, there would appear to be some basis for a definite connection between the amount of the State contribution and the amount of that

SCHOOLS—MISCELLANEOUS

contribution to be spent in a particular school, statutes subsequently enacted would render such a construction untenable. Section 7 of Chapter 16170, Laws of Florida, Acts of 1933, provides that the State funds shall be held by the State Treasurer as County Treasurer ex officio. It further provides that said contribution from the State shall be a part of the County School Fund. Section 1 of Chapter 17247, Laws of Florida, Acts of 1935 provides that it shall be the duty of the boards of public instruction to provide a minimum school term of eight months. It is therefore my opinion that under the statutes now in force the primary duty of the county board of public instruction is to maintain a uniform system of public free schools throughout the county and that in accomplishing this purpose they are not to be restricted to spending the portion of the County School Fund provided by the State in any particular districts.

You further request my opinion as to whether a county board of public instruction is obligated to maintain a minimum school year of eight months in a district whose voters have failed to approve the millage recommended by the county board as necessary to aid in maintaining such school year. I understand that the county school board recommends a uniform millage for all the districts of the county. Failure to cooperate in the county program by the electors of a particular district should not throw the burden on the taxpayers of the other districts of the county, which would be the result if this question were answered in the affirmative. If the electors of a particular district fail to do their part in approving sufficient millage then equity would require that no more of the State contribution be spent within that district than would have been spent if the uniform millage had been adopted, but that amount must be made available and cannot be diverted. In other words, any shortage in funds available must be that which arises from failure to levy the uniform minimum millage.

December 4, 1937.

COURSE OF STUDY AS TEXT BOOK UNDER CHAPTER 18133.
ACTS OF 1937

Dear Sir:

You request my opinion as to whether the Course of Study prepared for Florida schools, could properly be classified as a supplementary text book under Chapter 18133, Laws of Florida, Acts of 1937, so that one could be furnished for each school to be paid for out of the State Text Book Fund.

The words "Text Books" have been judicially construed by some courts to be almost synonymous with the words "school supplies." See "Words and Phrases," First Edition, Volume 8, pages 6934-35. While

SCHOOLS—MISCELLANEOUS

it is my opinion that the words "Text Books" should not be given such a far-reaching construction, I do regard the Course of Study as being embraced within such terms.

June 4, 1938.

DEFICIT IN FUNDS—TEMPORARY TRANSFER OF OTHER FUNDS
AUTHORIZED UNDER CHAPTER 12295, ACTS, 1927

Dear Sir:

There now exists a deficit of approximately \$900,000 in the School Fund. There is at the present time in the Motor Vehicle Expense Fund the sum of approximately \$280,000. There is also in the State Road Distribution Fund for the Second Gasoline Tax a surplus of approximately \$1,140,000; you requested my opinion as to whether or not under the provisions of Chapter 12295, Laws of Florida, Acts of 1927, the Governor of the State may, with the approval of the Comptroller, order a temporary transfer of funds from the State Road Distribution Fund and from the Motor Vehicle Expense Fund to the School Fund. You state that these funds requested to be transferred will not be needed until after sufficient funds will have been collected under Chapter 16848 and other school sources, within sixty days, when said transfer from the State Road Distribution Fund may be repaid.

Under Section 1304, Compiled General Laws, Permanent Supplement, all monies paid into the State Treasury under the provisions of law relative to the licensing of motor vehicles, except such part as shall be set aside by the State Motor Vehicle Commissioner and placed in the Motor Vehicle Expense Fund is appropriated to the credit of the County School Fund. You have asked if the sum not needed, which you state to be approximately \$280,000, may be transferred from the surplus which has accumulated in the Motor Vehicle Expense Fund, and it is my opinion that this surplus may be immediately transferred without any reimbursement to the Fund from the School Fund.

I find, however, that in the case of Kerce, Plaintiff, versus, J. M. Lee, as Comptroller, there has been entered an order granting a temporary injunction against you as Comptroller from making any distribution or disbursements of that portion of the money derived from the Second Gasoline Tax now in your hands or which may later come into the said Fund that is allocated to or for the use of certain named counties under the provisions of Chapter 15659, Laws of Florida, Acts of 1931. It is my opinion, therefore, that as long as this injunctive order stands unmodified you would not be authorized to make a temporary transfer.

It is my suggestion, in line with our conversation of today, in order to assist the school teachers in receiving this money, that a petition be filed with the Circuit Judge who issued the order, Honorable J. B.

SCHOOLS—MISCELLANEOUS

Johnson, requesting a modification of the order to authorize the temporary transfer under the provisions of Chapter 12295.

I believe a stipulation can be obtained from the attorneys representing the parties to the suit authorizing the modification, since it appears that the Fund would in no wise be damaged through such a transfer, as sufficient funds will be forthcoming from the School Fund to repay this fund before it is needed.

September 17, 1937.

**EFFECT OF PROVISIO CONTAINED IN SECTION 27 OF
CHAPTER 18134, ACTS OF 1937**

Dear Sir:

This is in reply to your letter of September 16th in which you request an opinion as to whether the proviso contained in Section 27, Chapter 18134, Acts of 1937, in any way makes ineffective Item (1), Section 8 and Sub-section 2, Section 12, of the same Act as applied to Duval County.

The proviso to which you refer reads as follows:

"Provided, however, that nothing herein contained shall be construed to repeal any of the provisions of Chapter 15,895, Laws of Florida, Acts of 1935, or Chapter 14678, Laws of Florida, Acts of 1931, and acts amendatory thereof."

It may be generally stated that there is no serious inconsistency of purpose between Chapter 18134, Acts of 1937 on the one hand and Chapter 15895, Acts of 1933 and Chapter 14678, Acts of 1931, on the other. As a matter of fact, Chapter 18134 contains in Section 23 thereof a statement of the procedure to be followed in counties having budget commissions.

As to the particular provisions of Chapter 18134, Acts of 1937 which you mention, to-wit, Item (1), Section 8 and Sub-section 2 of Section 12, it is my opinion that the proviso above set forth and referred to does not render same ineffective for they do not appear to be susceptible to a construction which would repeal any of the provisions of the laws relating to Duval County to which you have called my attention.

April 8, 1938.

**EXPENDITURE OF PUBLIC SCHOOL FUNDS ON ADULT EDUCATION
PROGRAM—SECTION 561, C.G.L.**

Dear Sir:

This is in reply to your letter of April 7th in which you request my opinion as to whether County Boards of Public Instruction may use

SCHOOLS—MISCELLANEOUS

County or District school funds for the payment of ten per cent of the cost of proposed civic education programs, the balance to be financed by the Federal Government. It is my opinion that such an expenditure would be legal in view of the provisions of subsection 11 of Section 561, Compiled General Laws of Florida, 1927, which read as follows:

"To perform all acts reasonable and necessary for the promotion of the educational interests of the county and the general diffusion of knowledge among the citizens."

September 4, 1937.

**PAYMENT OF INTEREST ON MATURED BONDS BEFORE
JUDGMENT BY COUNTY SCHOOL BOARDS**

Dear Sir:

This is in reply to your letter of September 2nd in which you set forth that the State Auditors are directing School Boards not to pay interest on matured bonds except when they are reduced to judgment. You call my attention to the cases of State ex rel vs. Sholtz et al., 156 So. 746, State ex rel Davis vs. Lee, et al., 154 So. 744.

It is my opinion that such directions to the School Boards are correct. See my opinion dated July 11, 1935 and reported at page 805 of the Biennial Report of the Attorney General for the years 1935-36.

September 2, 1937.

**PAYMENT OF SERVICE CHARGE TO BANKS ON SCHOOL
FUND ACCOUNTS**

Dear Sir:

This is in reply to your letter of August 30th in which you enclose copy of a letter from Superintendent Ernest Bridges of Everglades, Florida.

You request my opinion as to the right of a bank to make a service charge against accounts in which school funds are deposited when said accounts under the general rules of the bank are subject to the payment of such service charges.

Such service charges constitute payment for services actually rendered. I see no reason, therefore, why the accounts in which school funds are kept are exempt from the payment of such charges.

April 9, 1937.

PUPILS, EXPELLING WHEN BACKWARD NOT AUTHORIZED

Dear Sir:

This is in reply to your letter of April 7th with enclosed letter from M. L. Brinson. Your request my opinion as to whether or not a child

SCHOOLS—MISCELLANEOUS

who apparently can make no progress in his studies and who finds it impossible to learn to read with the little individual attention he can get in the class room can be expelled.

I find no statute authorizing the expulsion of backward pupils. On the other hand I find Section 493, Compiled General Laws of Florida, 1927 provides for the establishment and maintenance of a uniform system of public instruction free to all the youth residing in the State between the ages of six and twenty-one years.

The following is from 56 Corpus Juris, page 858:

"It is not sufficient ground for expulsion that the pupil has a low standing, or is difficult to teach * * * *."

Many school systems, particularly in the larger cities, make provision for special classes and have special methods of instruction for backward pupils. While it would seem under the provisions of Section 684, Compiled General Laws of Florida, 1927, relating to compulsory school attendance that such a child would be exempt from attending school, it is nevertheless true that he would have the right to attend school if his parents so desired.

It is, therefore, my opinion that a backward pupil cannot be expelled from the school for the sole reason that he is backward.

January 19, 1938.

PUPIL SHOULD BE ADMITTED

Dear Sir:

You request my opinion on the following question:

"May a pupil whose parents or guardian own a car carrying a license plate for another state than Florida be denied admittance to any public school in Florida?"

It is my opinion that the question should be answered in the negative, there being no statutes denying admittance to the public schools of Florida under the circumstances above stated.

May 3, 1937.

SCHOOL BUSES—PASSING OF AUTOMOBILE WHILE BUS STOPPED
TO TAKE ON OR UNLOAD PASSENGERS UNLAWFUL
UNDER CHAPTER 14552, ACT OF 1929

Dear Sir:

This is in reply to your letter of April 29th. You state the following facts:

SCHOOLS—MISCELLANEOUS

An automobile was closely following a school bus down the highway and the bus operator signaled for a stop and pulled over to the right side of the road to unload pupils.

You request my opinion as to whether or not the automobile which was following the bus could lawfully pass the bus if possible to do so before the school bus door was opened.

It is my opinion that Section 1 of Chapter 14552, Laws of Florida, Acts of 1929, requires the operator of a motor vehicle to come to a full stop when the school bus has stopped for the purpose of taking on or unloading school children. See my opinion under date of November 22, 1935, reported at page 449 of the Biennial Report of the Attorney General for the years 1935-36. The opening and closing of the school bus door is not the determining factor. If it were, the intent of the Legislature would be thwarted by encouraging drivers of motor vehicles to race by school busses in an attempt to pass while the door of the bus is still closed.

July 17, 1937.

SCHOOL LANDS—NOT SUBJECT TO DRAINAGE TAXES

Dear Sir:

This is in reply to your request for my opinion concerning the payment of taxes levied by the Everglades Drainage District on school lands within the District. You enclosed tax bills of the Tax Collector of Collier County, letter to you from said Tax Collector and copy of your reply.

School lands held by the State Board of Education are not subject to drainage taxes and the purported assessment of same is a nullity. See *Southern Drainage District, et al. vs. State of Florida, et al.*, 93 Fla. 672, 112 So. 561.

March 27, 1937.

**SCHOOL OFFICERS NOT AUTHORIZED TO OVERRULE PRINCIPAL
IN SUSPENSION OF PUPIL**

Dear Sir:

This is in reply to your letter of March 23rd in which you request my opinion as to whether or not school officers have the authority to overrule a principal in the suspension of a pupil.

Section 669, Compiled General Laws of Florida, 1927 provides that teachers have the power to suspend pupils from school for ten days for gross immorality, misconduct and violations of the regulations. Said section further provides that the teachers shall give immediate notice to the

SCHOOLS—MISCELLANEOUS

parents or guardian of the pupil and to the school supervisor of the suspension and the cause of it.

The Supreme Court of Florida in the case of *Ruff vs. Fisher*, reported in 155 So. 642 has the following to say in its opinion:

"So it is that when discord arises between a patron or pupil of the school and the teacher, the matter in due course should be taken to the principal for adjustment and, if satisfactory adjustment cannot be made, then it should be taken up with the school supervisor, and if either party is not satisfied with the disposition then obtained the issue should be presented to the county superintendent, and if he cannot satisfy the parties it should then be reported to the county board of public instruction, and if by the action of the board the legal rights of any one are infringed upon or violated, then such aggrieved party has the remedy of appealing to the courts for judicial determination of the questions involved."

June 25, 1937.

**SCHOOL YEAR WHAT CONSTITUTES UNDER PROVISIONS OF
CHAPTER 14782, ACTS OF 1931**

Dear Sir:

This is in reply to your letter of June 19th in which you request my opinion as to what constitutes a school year under the law which requires thirty-five years' teaching experience in order to be eligible for a pension. Such pensions are provided for in Chapter 14782, Laws of Florida, Acts of 1931.

Section 1 of that statute reads as follows:

"That whenever any person shall have taught in the public free schools of the State of Florida for thirty-five or more years, and such person is then incapacitated to do and perform any vocational work sufficient to earn a livelihood and is without means of support, such person shall thereafter, so long as the above conditions exist during the remainder of his or her life, be entitled to a monthly allowance from the State of Florida of Forty Dollars (\$40.00)."

A school year is defined by Section 496, Compiled General Laws of Florida, 1927, as beginning on the first day of July and ending with the last day of the following June. The school year is also defined in Section 499, Compiled General Laws of Florida, 1927, as containing two terms, a "term" being therein defined as containing four school months.

It is my opinion that in computing the period of service of an applicant for a pension, a school year should embrace two school terms

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when the applicant seeks to obtain credit for parts of school years taught. When the applicant has taught throughout all the school term or terms that may have been held during any given year beginning July first and ending the next June, he should be given credit for having taught a full school year. When an applicant has taught for two full terms and also in summer school during the same school year beginning July first and ending the following June thirtieth he is entitled to only one year's credit.

April 27, 1937.

**SEPARATION OF RACES—APPLICABILITY OF LAW TO PERSONS
SERVING IN ADMINISTRATIVE CAPACITY**

Dear Sir:

This is in reply to your letter of April 24th in which you enclosed correspondence with Muriel Day, Secretary of the Woman's Home Missionary Society of the Methodist Episcopal Church. It seems that this Society is operating a school for negro girls in Jacksonville known as the Boylan-Haven School. You request my opinion as to whether or not it would be contrary to Section 8112, Compiled General Laws of Florida, 1927, for this school to have a white superintendent and assistant superintendent, who do not teach but serve in an administrative capacity in the boarding home.

Under date of June 4, 1926, Honorable J. B. Johnson, then Attorney General, said the following:

"In my opinion Section 5870 of the Revised General Statutes of Florida (8112 Compiled General Laws of Florida, 1927) was intended to and does apply to all the schools, whether public or private. The purpose of this Statute, in my opinion, was to insure the separation of the white and negro races in the schools of this State."

Having in mind the purpose of the statute as above stated by Honorable J. B. Johnson, it is my opinion that it would be contrary to the legislative intent therein expressed for a white superintendent and assistant superintendent to maintain their headquarters within said school building.

March 29, 1937.

**STATUS OF PUBLIC SCHOOL STUDENT WHO MARRIES AND
REMAINS IN SCHOOL**

Dear Sir:

This is in reply to your letter of March 23rd in which you inquire

SCHOOLS—MISCELLANEOUS

whether or not there are any financial requirements imposed upon a public school student who marries and remains in school.

In regard to the right to attend school such a student occupies the same status as an unmarried student. See Section 493, Compiled General Laws of Florida, 1927.

April 13, 1937.

SUSPENDING PUPILS FOR REFUSAL TO SALUTE THE FLAG

Dear Sir:

This is in reply to your request for my opinion as to whether or not school children who refuse to salute the American flag may be suspended. The enclosed letter from Mr. * * * which states there are certain children between the ages of twelve and fourteen who refuse to salute the American flag, probably at the instigation of their parents.

Section 669, Compiled General Laws of Florida, 1927, directs teachers in part as follows:

"To suspend pupils from school for ten days for gross immorality, misconduct or persistent violations of the regulations, giving immediate notice to the parents or guardian of the pupil, and to the school supervisor, of the suspension and the cause of it."

If such pupils persist in their violation of the regulations requiring them to salute the flag then it would seem that the teachers would have the right to suspend them under the provisions above set forth.

February 3, 1938.

TEXTBOOK RATING COMMITTEE DUTIES UNDER
CHAPTER 18133, ACTS OF 1937

Dear Sir:

This is in reply to your letter of January 27th in which you state, in part, the following:

"In making plans for the meeting of the Textbook Rating Committee which will come in the near future I am anxious to clear up any uncertainties in my mind in regard to the duties and powers of this committee. I think it probable that this committee will wish to write or wire to a number of specialists in various fields asking for their recommendations and advice. Such correspondence would be in the name of the committee, typed by its secretary, and signed by its chairman.

"The committee will also wish to request certain people other than representatives of publishers to appear before the committee for consultation and advice."

SCHOOLS—MISCELLANEOUS

You request my opinion as to whether or not the Textbook Rating Committee provided for in Sections 10 to 13, inclusive, of Chapter 18133, Laws of Florida, Acts of 1937, has the authority to do the things above enumerated by you. It is my opinion that the Textbook Rating Committee does have this authority so long as the provisions of Section 12 of the statute are not violated. Section 12 provides, among other things, that "It shall be unlawful for any agent or representative of a publishing house to discuss matters relating to the books under consideration with any member of the Textbook Rating Committee either directly or indirectly, or for a member of the Textbook Rating Committee to discuss the books under consideration with anyone not a member of the Committee except during a meeting of the Committee."

October 25, 1937.

TRANSFER OF MONIES FROM INTEREST AND SINKING FUND TO
GENERAL COUNTY SCHOOL FUND NOT ADVISABLE

Dear Sir:

This is in reply to your letter of October 15th enclosing copy of a letter from Mr. * * * which reads in part as follows:

"Would you approve of the Board issuing Time Warrants, payable to the County-wide General Fund Issue of 1925 Interest and Sinking Fund, for the purpose of giving the School Board the right to use \$2,000.00 of funds for general school purposes? The said warrants to be payable on demand * * *."

"Since we are borrowing money from local bank for general purposes at the present time we felt, that since we are in position to replace this money in the event that bondholders might proceed against us, we might put this money to use, saving interest. We would consider the \$2,000.00 invested and allow the interest to accrue until paid."

The procedure above outlined would be in the final analysis a transfer of money from one fund to another. While transfers from one fund to another would generally be permitted with the approval of the Superintendent of Public Instruction (Section 21 of Chapter 18134, Acts of 1937) the Interest and Sinking Fund set aside under the statute to pay the interest and principal on bonds or warrants is not subject to such transfer. It is my opinion that such monies in the Interest and Sinking Fund should not be so transferred even though in this instance it is for the laudable purpose of saving interest. The small advantage to be derived from saving interest in this particular instance could be far outweighed by the injury that might be sustained from financial confusion and litigation which might result if this were used as a precedent throughout the State for transferring such interest and sinking funds.

CHAPTER VIII

STATE OFFICERS, BOARDS AND COMMISSIONS

SECTION 1

BEAUTY CULTURE EXAMINERS

April 7, 1938.

REVOCATION OF SPECIALISTS' CERTIFICATES—CHAPTER 16,800 OF 1935—SECTIONS 4151 (277) TO 4151 (303), C.G.L., 1936 SUPPLEMENT

Dear Sir:

I am in receipt of your letter of the 25th ultimo, relating to the Beauty Culture Act, Chapter 16,800, Laws of Florida, Acts of 1935.

You state that the previous Board issued approximately three or four hundred certificates of registration to beauty culture operators entitling them to practice only a few of the branches of beauty culture set forth in Section 2 of said Act. You further state that the Board, as now constituted, is of the opinion that there is no authority under the law for the issuance and renewal of such certificates commonly known as "specialists' certificates," and wishes to recall all such certificates. You ask my opinion in the above matter.

Section 14 of said Act provides that every registered beauty culture teacher, registered beautician and every registered junior operator who continues in active practice shall, annually, on or before July 1st, renew such certificate and if not renewed on such date it shall expire on the first day of August in that year.

Section 15 enumerates the grounds on which the Board may refuse to issue, or renew, or suspend or revoke, any certificate of registration. You will note that the grounds enumerated in said Section 15 do not apply to the situation above mentioned.

I have carefully gone over the entire Beauty Culture Act and I do not find any authority for issuing certificates for the practice of only part of the branches of beauty culture set forth in the Act. I would, therefore, suggest that no further certificates of this nature be issued.

As to the revocation of the above mentioned class of certificates already issued by the former Board, it is to be assumed that the Board construed the Beauty Culture Act as permitting such certificates. The Courts hold that an administrative construction of statutes is persuasive. In such situation, I think it would be well not to revoke or refuse to renew such certificates already issued, except on the grounds enumerated in Section 15 or until the Courts may pass upon their validity.

BEAUTY CULTURE EXAMINERS

April 7, 1938.

**BEAUTY CULTURE—RENEWAL OR RESTORATION OF CERTIFICATE
AFTER ONE YEAR PERIOD—CHAPTER 16,800 OF 1935—SECTIONS
4151 (277) TO 4151 (303), C.G.L., 1936 SUPPLEMENT**

Dear Sir:

I am in receipt of your letter of the 25th ultimo, referring to paragraph 12, Section 17 of Chapter 16,800, Laws of Florida, Acts of 1935, reading as follows:

“* * * All applications for renewal or restoration of certificate must be made within a period of one year after the date of expiration, otherwise the fee shall be Twenty-five (\$25.00) Dollars, except beauty culture teachers, which shall be One Hundred (\$100.00) Dollars.”

Section 17 provides for renewal of certain classes of certificates under the beauty culture act and prescribes the fees for such renewals. Paragraph 12 of said Section 17, as above quoted, provides for fee of renewal or restoration of certificates after a period of one year.

Answering your inquiry I beg to say in my opinion the fees provided in Section 17 for renewals when made within the year are superseded by said paragraph 12 of Section 17 when renewals are made after the period of one year. In other words, the fees provided in said paragraph 12 take the place of the prior enumerated renewal fees and are not intended as a penalty to be collected in addition to the regular fees prescribed when made within the year.

SECTION 2
BEVERAGE DEPARTMENT

January 23, 1937.

**BEVERAGE ACT—AUTHORITY TO REVOKE LICENSES OF LIQUOR
STORES ENGAGED IN BOOKMAKING IN CONNECTION
WITH BARROOMS**

Dear Sir:

This is in reply to your letter of January twenty-third requesting my opinion as to whether or not you have authority to revoke the licenses issued by your department to stores and barrooms conducting what is known as bookmaking business.

Your authority to revoke licenses is set forth in Section 1 of Chapter 16774, Laws of Florida, Acts of 1935, in the following language:

"The Director is hereby given full power and authority upon sufficient cause appearing of the violation by any licensee, whether convicted in a criminal court or not, of any of the laws of this State, or of the United States or of his maintaining a nuisance or unsanitary premises, or engaging in or permitting disorderly conduct on the premises when such beverage business is conducted, to revoke the license of any licensee. Before the Director shall revoke the license of any licensee, he shall give such licensee a written statement of such cause for revocation of license and a fair hearing, if the licensee shall demand a hearing. At such hearing, the licensee shall be entitled to produce witnesses and be represented by counsel. In order to permit a licensee, whose license shall be revoked, an opportunity to apply to the Courts for relief, no revocation of license by the Director shall become effective until ten days after such revocation but shall then become effective unless prevented by judicial action. If within said ten day period a licensee whose license has been so revoked shall apply to the Circuit Court or any Judge thereof of the county wherein such licensee is licensed to do business under this Act by mandamus or injunctive proceeding or otherwise to test the validity of such revocation, it shall be the duty of such Court of the Judge thereof to act immediately in the disposition of such proceeding and to make such orders as to return days, time of filing pleadings and time for hearings on law or facts as may be necessary to a prompt determination of the validity of such revocation. If such proceeding be begun after such ten day period has elapsed it shall be heard according to the general law as it shall exist at the time of such proceeding."

BEVERAGE DEPARTMENT

That bookmaking is condemned as a violation of the criminal statutes is apparent from Section 7672, Compiled General Laws of Florida, 1927, which reads as follows:

"7672. (5514.) UNLAWFUL TO BET ON RESULT OF TRIAL OR CONTEST OF SKILL, ETC.—Whoever stakes, bets or wagers any money or other thing of value upon the result of any trial or contest of skill, speed or power or endurance of man or beast, or whoever receives in any manner whatsoever any money or other thing of value staked, bet or wagered, or offered for the purpose of being staked, bet or wagered, by or for any other person upon any such result, or whoever knowingly becomes the custodian or depositary of any money or other thing of value so staked, bet or wagered upon any such result, or whoever aids, or assists or abets in any manner in any of such acts all of which are hereby forbidden, shall be guilty of gambling, and shall be punished by imprisonment not exceeding six months or by fine not exceeding five hundred dollars, or by both such fine and imprisonment."

It is, therefore, my opinion that you have authority to revoke such licenses by reason of the provisions of law hereinabove set forth. You must, of course, follow the procedure outlined in Chapter 16774.

November 7, 1938.

BEVERAGE ACT—CLUB—NON RESIDENT GUEST

Dear Sir:

In reply to your letter of November 3rd, reading as follows:

"A part of paragraph X of Section 5, Chapter 16774, Acts 1935, states as follows:

"The payment of such club licenses shall authorize the service and distribution to members and non resident guests of the club only."

"Please let me have your opinion as to what constitutes a non resident guest. Your usual prompt attention will be appreciated."

I would state that in my opinion a non-resident guest within the meaning of this Act is a guest of the club who resides outside of the city and general locality in which the club is situated. In other words, if a club is located in Tampa or its vicinity, a non-resident guest would be one who does not live in the City of Tampa or any of its suburbs, but lives in some other town.

BEVERAGE DEPARTMENT

December 22, 1937.

BEVERAGE ACT—CONSTRUCTION OF WORD "SCHOOLS" IN
SECTION 5 OF CHAPTER 16774, ACTS OF 1935*Dear Sir:*

This is in reply to your letter of December 16th. * * * You request my opinion as to the proper construction of the words "established school" appearing in that portion of Section 5 of Chapter 16774, Acts of 1935, prohibiting the issuance of a license to a vendor whose place of business is within 2,500 feet of an established school except in incorporated cities and towns.

The well considered opinion in the case of *In Re Townsend* decided by the Court of Appeals of New York, reported in 88 *Northwestern Reporter*, page 41 throws some light on the problem. The following is from that opinion:

"A 'school' in its broadest sense may be said to include any institution devoted to instruction of any kind; and in the same broad sense a 'schoolhouse' may be defined as a place or building used for any such purpose. But there are a great variety of so-called schools devoted to many special sciences and trades. There are schools for education in the professions of law, medicine, and theology; schools for painting, music, and other advanced arts; schools for stenography and typewriting; schools for dancing, gymnastics, physical culture, and boxing; and schools for almost numberless other more or less practical occupations. Many, if not all, of these special courses, are taken up by persons of mature years who have passed through the earlier educational training which is an essential preliminary to every avocation or vocation requiring intelligence, thought, or talent. All are instructive to a degree, but none are within the usually accepted definition of education. Much less can they be within the purview of a particular statute unless they are plainly specified in its terms, and still less are they to be considered within the definition of 'schools' and 'schoolhouses' as those words are ordinarily understood. * * *

"This phase of the statute indicates that the Legislature in using the term 'schoolhouse' had in view primarily the common public school devoted to such general elementary and intermediate instruction as is adapted to the education of our children and youth, and perhaps secondarily such semi-public and private schools as are conducted for the same purpose. Broadly classified this includes all 'schoolhouses' in which our so-called grammar and high schools are conducted. While we can find no express warrant in the words of the statute for placing

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private and semi-public schools in the same category with common public schools, we are satisfied that it was not the intention of the Legislature to exclude the former from its wholesome protection. That is the utmost limit, however, to which the language of the statute can be extended. The evident intention of the Legislature was to remove the masses of our school-going children and youth as far as possible from the influences of the liquor traffic, and the most effective means of accomplishing this end was thought to be the interdiction of the traffic within a certain radius surrounding the ordinary schoolhouse. It is obvious that, unless we draw a line with reference to schoolhouses at the point thus indicated, we must go to the extreme length of holding that the term 'schoolhouse' includes every place where instruction is given of any kind or degree, and to persons of any age."

It is my opinion that the words "established school" appearing in said statute should be construed to include all public schools, recognized universities, colleges and all private schools offering substantially the same course of instruction available in the public schools. It would in my opinion be immaterial whether or not such a private school is a boarding school or merely a day school.

Sufficient facts concerning the particular school referred to in the correspondence are not before me so that I may determine whether or not it is embraced within the term "established school" contained in the statute. This is a matter however which may readily be determined by your department by applying this definition to the facts as you find them.

November 10, 1938.

BEVERAGE ACT—ESTABLISHMENT OF FUNDS—SECTION 13 OF CHAPTER 18015, ACTS OF 1937, AND CHAPTER 18255, ACTS OF 1937

Dear Sir:

I acknowledge receipt of your letter of October 7, 1938, in which you state:

"Reference is made to a letter dated June 26, 1937, by Honorable Cary D. Landis, former Attorney General, addressed to Honorable J. M. Lee, Comptroller, re Senate Bill 951, Beverage Tax Law of 1937, and to letters addressed by you on July 29, 1938, to Honorable Fred P. Cone, Governor, re State Welfare Board, Appropriations, use of unexpended balance, and of September 13, 1938, addressed to Honorable J. M. Lee, Comptroller, re Chapter 18015, Acts of 1937, Appropriations, Section of the Beverage Act.

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"Audits are now in progress of the accounts of the State Beverage Department and of the State Welfare Board, and it is requested that the following matters discussed in the above-mentioned opinions be clarified for the guidance of this Department in conducting these audits.

"1. Section 1 of Chapter 16774, Acts of 1935, reads in part as follows: 'The appropriation hereby made shall in no event exceed in any year 8% of the taxes collected hereunder during said year.' Section 2 of Chapter 18015, Acts of 1937, limits the expenses of the Beverage Department to 7% of the taxes collected under the Beverage Act of 1935 and under that Act, and provides that any unexpended balance of the 7% be transferred to the State fund for the payment of old age assistance at the end of each fiscal year. The 1935 Act does not appear to contemplate the establishment of a separate fund from which the expenses of the Beverage Department were to be paid, and, since Section 18 of that Act appropriates all monies in excess of the expenses of the Department and refunds for spoiled stamps, to the General Revenue Fund, it would appear that the funds on hand on June 5, 1937, the date the 1937 Act became a law, should have been transferred to the General Revenue Fund. Item 3 in the letter of June 26, 1937, however, states that this money should go to the Old Age Pension Fund and not to the General Revenue Fund.

"2. Should the Director of the Beverage Department deposit 7% of his collections to a separate fund in the Treasury, now established as the 'Beverage Department Operating Expense Fund' and 93% to a fund for old age assistance, now established in the Treasury as the 'State Welfare Fund' or should he attempt to determine when a surplus exists in any fiscal year in the latter fund under Section 13 of Chapter 18015, Acts of 1937, and thereafter deposit the 93% to the county school fund. It seems that since the surplus mentioned in Section 13 may consist not only of collections in excess of \$3,800,000.00 in any fiscal year, as appropriated to the State Welfare Board by Section 23 of Chapter 18285, Acts of 1937, but also of an additional amount which would consist of the excess of the \$3,800,000.00 over actual payments for assistance and administrative expenses of the State Welfare Board, the Director of the State Beverage Department would have no knowledge as to when a surplus existed. Accordingly, it would seem that he should make all deposits of the 93% to the State Welfare Fund, and in the event a surplus existed in that fund at the end of any fiscal year, a transfer should be made by the State Welfare Board from the State Welfare Fund to the county school fund, as pro-

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vided in Section 13 of Chapter 16015, Acts of 1937, and that this transfer would not be made in view of the opinion of July 29, 1938, if any part of the funds on hand at June 30 were deemed to be needed in the ensuing fiscal year by the State Welfare Board.

"3. Item 2 in the letter dated September 13, 1938, provides that monies which are collected and in the hands of employees of the Beverage Department prior to June 30, 1938, but which were not deposited in the State Treasury until later should be considered a part of the receipts for the fiscal year ending June 30, 1938. Since funds are being collected continuously by employees of the Department, this situation will exist at the end of each fiscal year, and it will require a substantial amount of additional work in the office of the Director to determine the date of collection and the amount of unremitted funds on hand at the end of each fiscal year. Since the volume of such collections would normally be the same on the same day of each year, it would seem that it would be a practical solution of this problem that such collections be treated as receipts of the year in which deposited in the Treasury, and it is, of course, impossible for the State Auditing Department to determine the actual date of collection of many items.

"4. At the present time collections are transmitted by the Director of the State Beverage Department to the State Treasurer who holds these monies in suspense and not a part of any State funds which are recorded in the records of the Comptroller until such time as a sufficient amount has been accumulated for the Director of the Beverage Department to make a distribution to the Beverage Department Operating Expense Fund and to the State Welfare Fund. Would it not be advisable for original collections to be deposited in a 'Beverage Tax Fund' in the Treasury and recorded on the State records by the Comptroller as other State funds are recorded, and for distributions to be made from this Beverage Tax Fund to the Beverage Department Operating Expense Fund and the State Welfare Fund by warrant in the usual manner? If, however, a Beverage Department Operating Expense Fund is not required under the 1937 Act, the expenses of the Beverage Department could be paid by warrant from the Beverage Tax Fund and the remainder distributed periodically to the State Welfare Fund."

Question No. 1. Subsequent to this request for an opinion, the Comptroller's office has transferred the funds in question to the County School Fund pursuant to a former opinion of this office. Therefore, any further consideration of the former opinion would serve no useful purpose.

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Question No. 2. Section 13 of Chapter 16015 in effect provides that the funds collected under the Act in question, except such funds as are used for the expenses of the beverage department, are appropriated and shall become a part of the Old Age Pension Fund; provided, however, that any surplus existing after payment to these funds shall be paid into the State Treasury to the credit of the County School Fund.

Chapter 18255, Acts of 1937, in effect provided for an appropriation of \$3,800,000 for the benefit of the Welfare Fund. This Act must be read in connection with Section 13 of Chapter 18015. The effect of these two Acts is to provide that the Beverage Department shall be authorized to expend not exceeding seven per cent. for operating expenses. The next \$3,800,000 collected shall go to the Welfare Fund and all over that shall go to the County School Fund. If there is a surplus existing after operating expenses have been deducted from the seven per cent allowed them, this surplus follows the routine above mentioned.

It is therefore my opinion that the Beverage Department should place in the Treasury Department to the credit of the Beverage Department Operating Expense Fund seven per cent of the collections and ninety-three per cent to the State Welfare Fund. If during any one fiscal year the ninety-three per cent deposited to the State Welfare Fund should exceed \$3,800,000, then the balance collected after deducting the seven per cent for operating expenses, should be placed to the credit of the County School Fund. At the end of the fiscal year, if there remain any sums in the seven per cent operating expense fund, they should be transferred to the credit of the Welfare Fund, if that fund has not received the full \$3,800,000 appropriation; if, however, that fund has received the full \$3,800,000 appropriation, then that balance of the seven per cent fund should be placed to the credit of the County School Fund.

Question No. 3. While I realize the trouble it might cause the Auditing Department to determine the actual dates of collection of many items, I must adhere to my opinion of September 13, 1938.

Question No. 4. It is my opinion that the Constitution contemplates that State money should be placed in the State Treasury as a part of the State funds, and should be recorded in the records of the Comptroller. I therefore deem it advisable for the original collections made by the Beverage Department to be deposited in a Beverage Tax Fund in the Treasury, and recorded on the State records by the Comptroller as other State funds are recorded, and that distributions shall be made from this Beverage Tax Fund to the Beverage Department Operating Expense Fund and to the State Welfare Fund in the usual manner.

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June 26, 1937.

BEVERAGE ACT—FUNDS COLLECTED EXCLUDING EXPENSES, TO
GO TO OLD AGE PENSIONS, ETC.*Dear Sir:*

I acknowledge receipt of your letter of June 22, 1937, relative to Chapter 18015, Acts of 1937. For convenience I am stating your questions and following with my answers.

"1. The first question that arises is: What per cent of receipts may be used for enforcement of this law? The 1935 law in Section 1 provides that not to exceed 8% of receipts may be used. Section 2 of the 1937 Act, without specifically repealing or amending the 1935 law, provides 7% may be used."

Chapter 18015, the Beverage Act of 1937, by implication repeals many of the provisions of the 1935 Act, or Chapter 16774. Section 2 of the 1935 Act provides that not to exceed 7% of the receipts may be used for administrative purposes. This would control over the provisions of the 1935 Act; therefore, it is my opinion that 7% is the amount that can be used for administrative expenses.

"2. To what fund or funds should the proceeds of this tax, after deducting the 7% or 8% for expenses, be deposited; or for what use are such proceeds appropriated? Section 18 of the 1935 act appropriates the receipts, after the expenses are paid, to the General Revenue Fund. Section 13 of the 1937 act, without specifically repealing or amending the 1935 act, appropriates the receipts for Old Age Assistance."

Section 13 of the 1937 Act appropriates the receipts after administrative costs to Old Age Assistance. This section impliedly repeals the provisions of the 1935 Act appropriating receipts to the General Revenue Fund.

"3. What disposition should be made of approximately \$60,000.00 unexpended funds received under the 1935 act and set up for expenses but not used prior to the effective date of the 1937 act? These funds are part of the 8% set up for expenses under the 1935 act. Under Section 18 all monies not used for expenses are appropriated to General Revenue Fund."

Section 18 of Chapter 18015 provides as follows: "All funds collected by the State under this Act and under the Beverage Act of 1935, except such funds as are used for the expenses of the Beverage Department are hereby appropriated to and shall become a part of the old age assistance fund and/or old age pension fund for the payment of old age assistance and/or old age pensions as the same may be made

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and provided for by the Legislature of the State of Florida. Provided however that any surplus money existing after payment of Old Age Assistance, Blind and Needy Children prescribed in this Act, the same shall be paid into the State Treasury to the credit of the County School Fund."

It will be observed that the above quoted section provides for all funds collected under this Act (Beverage Act of 1937) and under the Beverage Act of 1935, excluding the expenses of the Department, to be appropriated to and become a part of the Old Age Pension Fund. This Act was approved by the Governor on the 5th day of June, 1937, and immediately became a law. It is therefore my opinion that all unexpended balances under the 1935 Act should go to the Old Age Pension Fund and not to the General Revenue Fund.

July 17, 1937.

**BEVERAGE ACT—MALT BEVERAGES—METHOD OF COMPUTING
TAX UNDER SECTION 9 OF CHAPTER 16774, ACTS OF 1935,
AS AMENDED BY CHAPTER 18015, ACTS OF 1937**

Dear Sir:

This is in reply to your letter of July 12th in which you request my opinion as to the proper method of computing the amount of tax on malt beverages under the provisions of Section 9 of Chapter 16774, Laws of Florida, Acts of 1935, as amended by Section 10 of Senate Bill 951, Acts of 1937.

It is the contention of various breweries of the State who manufacture such malt beverages that they should be permitted to pay the tax on a gallonage basis, even though the larger part of their production is bottled and later sold by vendors in bottles. Several theories have been advanced in support of this contention. One theory is that the tax is a tax on the *manufacture* of the beverage, the payment of which, however, is postponed until after the first sale by the manufacturer. The second theory is that it is a tax on the *first sale* of the beverage and that if the beverage were sold in bulk by a manufacturer to a distributor and then bottled by the distributor the tax would be payable on a gallonage basis. It is urged in support of this second contention that it is within the power of the manufacturer to determine the rate of his tax, since he can elect to make the first sale either in bulk or by bottle. It is therefore urged that since the manufacturer has this right it is clear that the legislative intent limits the amount of tax collectable under the Act to \$.07 per gallon and the State Beverage Department would be justified in accepting the payment of the tax on a gallonage basis if the manufacturer should elect to pay the tax at the time of manufacturing the beverage.

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It is my opinion that the tax is imposed not on the privilege of *manufacturing* the beverage but rather on the privilege of *selling* same. It is further my opinion that the tax is not necessarily on the privilege of merely selling without regard to whom the sale is made but that it is a tax on the privilege of selling to a vendor, as defined in Chapter 16774, Acts of 1935. It is that sale of the beverage which places the same in the channels of retail trade, and which constitutes the privilege upon which the Legislature sought to impose the tax. I am supported in my opinion by the fact that the Legislature did not specifically say that the tax was imposed on the **first sale** and also by the fact that the legislature saw fit to distinguish between sales in kegs, barrels, bulk and bottles. Obviously, if the intent was simply to collect a gallonage tax there would have been no need to mention bottles.

You further request my opinion as to the method of computing the tax on beer which is imported from other states and sold within the State in bulk to bottlers who bottle and sell same to vendors. In accordance with the conclusions which I have hereinabove stated, it is my further opinion that the distributor of such beer who makes the sale to the vendor must pay the tax on same, based upon the number of bottles sold.

INTOXICATING LIQUORS

May 10, 1937.

AFFIDAVIT FOR SEARCH WARRANT—SPECIFICATION OF ROOM IN BUILDING—AMOUNT IN POSSESSION OR TRANSPORTED

Dear Sir:

A few days ago you were in the office and made inquiry if two affidavits are necessary to secure a search warrant in connection with intoxicating liquors. You also made inquiry if search warrant must state the particular room or rooms in the building to be searched. You also made inquiry if arrest can be made if only three gallons or less is found.

Answering your first inquiry I quote you the second headnote of the decision of our Supreme Court in the case of *Thurman vs. State*, 116 Fla. 426, 156 So. 484, as follows:

"Constitutional provision that search warrant shall not be issued without probable cause makes existence of probable cause judicial question to be determined by judge or magistrate before issuing warrant."

The above quotation appears to give the Magistrate wide powers in the matter of issuing search warrants but the same must be taken

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in connection with Section 22 of the Declaration of Rights relating to searches and seizures, which reads as follows:

"The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches, shall not be violated, and no warrants issued, but upon probable cause, supported by oath or affirmation, particularly describing the place or places to be searched and the person or persons, and thing or things to be seized."

You will note that said provision of the Constitution requires the probable cause to be supported by an "oath" or affirmation and does not require two oaths or affirmations. I am, therefore, of the opinion that two oaths are not necessary to secure a search warrant with reference to intoxicating liquors if one oath shows probable cause.

Answering your second question I beg to say that a search warrant must definitely describe the premises to be searched, but it is not always necessary to definitely name a certain room in a particular building unless such room is under separate occupancy or control from the other parts of the building, in which situation it would be necessary to definitely name such room when it alone is sought to be searched.

Your third inquiry with reference to arrest when only three gallons or less of intoxicating liquors are found involves both the possession and the transportation of intoxicating liquors. I quote you from paragraph (c) of Section 11 of Chapter 16,774, Laws of Florida, Acts of 1935, as follows:

"* * * It shall be unlawful for the beverages herein defined to be transported in quantities of more than 12 bottles except as follows:

- I. By common carriers;
- II. In vehicles of licensees to which said vehicles are attached the license plates herein mentioned;
- III. By individuals who possess such beverages not for re-sale within the State."

I also quote you paragraph (i) of the same Section and Chapter reading as follows:

"From and after thirty days after this Act becomes effective it shall be unlawful for any person to possess or transport within this State beverages, as to the sale of which a stamp tax is imposed, in excess of three gallons, unless the bottles or other immediate containers in which such beverages are contained shall have affixed to them the stamps hereby required. Provided that this provision shall not apply to common carriers or to manufacturers or to distributors licensed hereunder. **Provided,** further, that this provision shall not apply to persons possessing

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or transporting such beverages for their personal consumption and not for re-sale in the event such beverages shall not have been sold after the stamp tax hereunder shall have become effective; but the burden shall be upon the possessor or transporter to establish that such beverages are for his personal consumption and are not for re-sale and that the beverages were not sold after the stamp tax hereunder became effective."

The above quoted statutes with reference to the possession and transportation of alcoholic liquors are the only statutes which I have been able to find that are now effective with reference to the amount of intoxicating liquors that may be possessed or transported.

June 23, 1937.

INTOXICATING LIQUORS—BOUNDARIES, STATE OF FLORIDA

Dear Sir:

I am in receipt of your letter of the 22nd instant making inquiry as to how far out to sea your Department has jurisdiction in the Miami area.

In reply I call your attention to Article I of the State Constitution reading as follows:

"The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama, and the thirty-first degree of north latitude; thence due east to the Chattahoochee river; thence down the middle of said river to its confluence with the Flint river; thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; *thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to, and including the Tortugar Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land to a point west of the mouth of the Perdido river; thence to the place of beginning.*"

I have Italicized the part of the above boundaries of the State which pertains to the Miami area concerning which you make inquiry.

October 13, 1937.

INTOXICATING LIQUORS—BRIDGE CORPORATION NOT AUTHORIZED TO GIVE FREE PASSAGE TO SUPERVISORS

I have your letter of the 11th instant, the body of which reads as follows:

Dear Sir:

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"Please advise me your opinion as to whether the laws of Florida require or permit the Pensacola Bridge Corporation to give to Supervisors of the State Beverage Department of Florida, free passage across their Pensacola Bay Bridge.

"I understand that the law does require them to give free passage to police officers and military forces of both Federal and State."

Your attention is called to Section 2752, Compiled General Laws of Florida, 1927, reading as follows:

"The militia of the State when actually going or returning from musters, or other militia services, shall be exempt from paying toll at any of the ferries and bridges in this State. Clergymen and preachers of the Gospel shall also be exempted from paying toll at said bridges and ferries."

Your attention is also called to Section 2752 (1), Compiled General Laws of Florida, 1936 Supplement, reading as follows:

"Any person belonging to the military forces of the State going to or returning from any parade, encampment, drill, muster, or other military service or meeting which he may be required to attend, if he is uniform, presents an order for duty, or such other proper identification to be prescribed by the Adjutant General, and all persons driving automobiles or other vehicles belonging to the military department of the State of Florida used for transporting military personnel, stores and property, when properly identified shall, together with any such conveyance and military personnel and property of the State in his charge, be allowed to pass free through all toll gates and over all toll bridges and ferries in this State. A copy of this law will be posted at each toll bridge and on each ferry."

Your attention is also called to paragraph 6 of Section 2749 (3), General Laws, 1936 Supplement as follows:

"* * * Provided, that no tolls shall be charged or collected for the use of any toll highways or ferries contemplated under this law by troops, Federal or State, fire departments, police officers in performance of their official duties, or emergency ambulances."

Section 1 of Chapter 16,774, Acts of 1935, provides among other things the following: "Such supervisors shall have all the powers of Deputy Sheriffs in the enforcement of the beverage laws of this State, and in the prosecution of offenders against such laws."

The above are all of the statutes I have been able to find relating

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to the subject of your inquiry and, in my opinion, the same do not indicate that the said bridge corporation is required by such statutes to give the supervisors of the Beverage Department free passage without toll.

July 7, 1938.

INTOXICATING LIQUORS—CHARTERED OR INCORPORATED CLUB

Dear Sir:

I have your letter of the 21st Ult., the body of which reads as follows:

"I would appreciate it very much if you would give me an Opinion with reference to Sub-section X of Section 5, Chapter 16,774—Acts of 1935 which provides for certain clubs obtaining a liquor license at a reduced fee.

"You will note this subsection X reads as follows:

"Persons associated together as a *chartered or incorporated club* * * *."

"Are these two phrases synonymous, or is a club that is operated under a Charter, but not incorporated entitled to the same privileges under this Act as an incorporated club?"

In reply, I beg to say that the words "chartered or incorporated club," as used in the above mentioned statute, appear to relate to clubs incorporated or chartered under the law and do not appear to relate to a club holding some document which it may call a charter, unless it has been chartered or incorporated under specific statutes. To state it otherwise, the word "chartered" and the word "incorporated," as used in the statute, are practically synonymous.

July 31, 1937.

INTOXICATING LIQUORS—DEFINITION OF WORDS "INTOXICATED" AND "UNDER THE INFLUENCE OF INTOXICATING LIQUOR"

Dear Sir:

I have your letter of the 20th inst., requesting to be furnished with definitions by the courts of the words "intoxicated" and "under the influence of intoxicating liquor."

In reply I beg to say that the nearest approach to a definition of the above words by our Supreme Court appears to be in the case of Cannon vs. State, 91 Fla. 214, 107 So. 360, and I quote you as follows Headnotes 1 and 2 of said case pertaining to your inquiry:

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1. "The words in an indictment, 'being at the time under the influence of intoxicating liquor,' are not synonymous with or equivalent to the language used in Chapter 9269 of the Laws of Florida 1923, 'while intoxicated,' which statute provides that, where the death of a human being is caused by the operation of an automobile by any person while intoxicated, such person shall be deemed guilty of manslaughter."

2. "Through all persons intoxicated by the use of alcoholic liquors are under the influence of intoxicating liquors, the reverse of the proposition is not necessarily true, for a person may be to some degree under the influence of intoxicating liquors without being in fact intoxicated."

March 10, 1937.

**INTOXICATING LIQUORS—DISTRIBUTOR HAVING INTEREST IN
VENDOR CONTRARY TO LAW**

Dear Sir:

I am in receipt of your letter of the 5th instant requesting my opinion on the following situation, which I quote from the body of your letter:

"A certain Night Club in the Miami area went broke at the close of the 1935-1936 season owing several wholesale liquor dealers in Miami a considerable amount of money. This Night Club has now been reorganized and by consent of a majority of its creditors are in position and want to pay off such creditors as follows: 25% in cash, and the balance in preferred stock in the reorganized Club, which stock carries no voting power. Can these wholesale dealers accept this preferred stock in settlement of the balance of their open accounts without violating Sub-Section C of Section 4 of Chapter 16,774, Acts of 1935?"

In reply your attention is called to Section 2 of Chapter 16,774, Laws of Florida, Acts of 1935, which contains the provision that no license shall be issued to a manufacturer and distributor as a vendor. Your further attention is called to that part of paragraph (c) of Section 4 of the same Act which reads as follows:

"* * * No licensed manufacturer, or distributor of any of the beverages herein referred to shall have any financial interest directly or indirectly, in the establishment or business of any vendor licensed under this Act, nor shall such licensed manufacturer or distributor assist any vendor by any gift, or loan of money or property of any description or by the giving of any rebates of any kind whatsoever. No licensed vendor shall ac-

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cept, directly or indirectly, any gift, or loan of money or property of any description or any rebates from any such licensed manufacturer or distributor. * * *

The proposed procedure would in my opinion be contrary to the above mentioned statutes.

April 8, 1938.

INTOXICATING LIQUORS—EXPERT WITNESS FEES

Dear Sir:

I am in receipt of your letter of February 26, 1938, the body of which reads as follows:

"The question has arisen on a number of cases of late as to the payment for analysis and expert testimony by a private chemist making such analysis.

"I would appreciate your furnishing me an opinion as to whether or not the above costs could not be included in the court cost of the case. If not, would not the County Commissioners be authorized under the law to make payment for the cost of such analysis?"

I quote you as follows, Section 4379, Compiled General Laws of Florida, 1927:

"Witnesses in all cases, civil and criminal, in the circuit courts, county courts, criminal courts of record now or hereafter created, and witnesses summoned before any referee, arbitrator or master in chancery, shall receive for each day's actual attendance two dollars, and also five cents per mile for actual distance traveled to and from the courts; in courts of county judges and justices of the peace, one dollar per day and the same mileage as in the circuit court."

The only statute which I find relating specifically to expert witness fees is Chapter 18,412, Laws of Florida, Acts of 1937, Section 1 of which reads as follows:

"That whenever it shall be made to appear in the trial of any person in this State for a felony, that it is necessary or expedient in the interest of justice to have the testimony of an expert as to his opinion concerning any matter or thing relevant or pertinent to the issues in said cause, the Judge of such Court where such felony is being, or is about to be tried, upon the motion of the State, may enter an order requiring the attendance of an expert to appear and make examination of any person or exhibit offered or to be offered in evidence in the

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trial of said cause and to testify as to his opinions and findings thereon, and to allow and fix the compensation to be paid such expert for his services in making such examination, and for his time in attendance upon the Court to testify as to his findings and opinion, which said compensation so fixed by the Court, shall be taxed as costs and paid in the same manner as other costs in said suit."

You will note that said statute relates only to trials in felony cases. Article XVI, Section 25, of the State Constitution, defines felonies as follows:

"The term felony, whenever it may occur in this Constitution, or in the laws of the State, shall be construed to mean any criminal offence punishable with death or imprisonment in the State penitentiary."

April 6, 1938.

**INTOXICATING LIQUORS—LOCATION OF PLACES OF BUSINESS—
DISTANCE FROM ESTABLISHED SCHOOL OR CHURCH**

Dear Sir:

I have your letter of the 30th ultimo, the first paragraph of which reads as follows:

"I have been asked if I will approve an application for a liquor license for a proposed place of business to be located 1,950 feet from an 'established church' if the proposed place of business is outside the limits of an incorporate city and the location of the church is inside the city limits. Please give me your opinion of this question."

Your attention is called to the last paragraph of Section 5 of Chapter 16,774, Laws of Florida, Acts of 1935, reading as follows:

"No license under sub-sections III, IV, V, VI, VII, VII½ of this Section shall be granted to a vendor whose place of business is or shall be within 2,500 feet of an established school or church except in incorporated cities and towns, which said incorporated cities and towns are hereby given the power hereafter to establish zoning ordinances restricting the location wherein such licenses may be permitted to conduct such place of business and no license shall be granted to any such licensee to conduct a place of business in a location where such place of business is prohibited from being operated by such municipal ordinance."

In reply I beg to say in my opinion the above statute does prohibit a license for a place of business so located.

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September 9, 1937.

INTOXICATING LIQUORS—NOT SUBJECT TO TAX ON SALE TO
FEDERAL GOVERNMENT—TAX ON SALE TO OFFICERS' CLUBS
OPERATED ON GOVERNMENT PROPERTY*Dear Sir:*

On March 20, 1937, I wrote you as follows:

"I am in receipt of your letter of the 19th instant the body of which reads as follows:

'Does Chapter 16774, Acts of 1935, known as the 'Liquor Law' impose an excise tax on liquors sold to stores operated and controlled by the Federal Government? Should this tax be required of 'Officer's Clubs,' etc., operated on Government Reservations but otherwise has no connection with the Federal Government?'

"In reply to your first inquiry I quote you from my letter of July 9, 1935, to Hon. J. A. Cromier, Director State Beverage Department, as follows:

'Further answering question 2 it is my opinion that beverages sold to Federal Government owned and operated stores are not subject to the stamp tax. See: *Panhandle Oil Co. vs. Miss.*, 277 U. S. 218, 72 L. Ed. 857. See also: 26 R. C. L. 95, Taxation 71.'

"Answering your second question as to Officers' Clubs I beg to say it is my opinion sales to such Clubs are subject to the excise tax provided for in Chapter 16,774, Acts of 1935, unless such Officers' Clubs are operated by the Federal Government."

After further consideration I desire to modify the last paragraph of my above letter to read as follows:

Answering your second question as to Officers' Clubs, I beg to say it is my opinion that alcoholic beverages sold and delivered to such Clubs located on Federal owned property over which the State has ceded exclusive jurisdiction to the United States are not subject to the stamp tax provided for in Chapter 16,774, Laws of Florida, Acts of 1935.

September 28, 1937.

INTOXICATING LIQUORS—PACKAGE STORES—OPENINGS TO
ANOTHER BUILDING OR ROOM—CONTRARY TO
SECTION 11 OF CHAPTER 16,774 OF 1935*Dear Sir:*

I am in receipt of your letter of the 27th instant referring to

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paragraph (e) of Section 11 of Chapter 16,744, Laws of Florida, Acts of 1935, relating to package stores and containing the following language:

"Such places of business shall have no openings permitting direct access to any other building or room."

You make inquiry if such provision in the statute would prohibit an opening into another room "say six by nine inches for the purpose of making change."

Webster's New International Dictionary, among other definitions given for the word "access," contains the following: "A coming to, or near approach." The same dictionary defines the word "open" as follows: "Free to be entered, visited or used" and "Having, or characterized by, openings, interstices, spaces, holes, bare places, or the like."

While the opening you speak of might be used mainly for the purpose of making change, the same could be very easily used for the purpose of promoting and making sales and to defeat the restriction imposed by the above quoted provision of the statute. It is my opinion, therefore, that such an opening would be contrary to the provision and purpose of the law.

July 29, 1937.

INTOXICATING LIQUORS—PENALTIES FOR VIOLATION OF
SECTION 15, CHAPTER 16774 OF 1935

Dear Sir:

I have your letter of the 28th inst., making inquiry if this office has rendered an opinion on Section 15, Chapter 16774, Acts of 1935, relating to penalties for violation of provisions of said Act and particularly as to whether the sale of liquors in a wet county without license therefor would be a felony or a misdemeanor.

In reply, I beg to say that no opinion on the subject of your inquiry appears to have been rendered by this office.

I note your suggestion that the license required of vendors is an excise tax and the sale without such license would constitute a felony under the provision of the first paragraph of Section 15 of said Act.

You will note that the above mentioned paragraph provides that anyone making false entries in records or violating any of the provisions of this Act concerning *the excise tax* therein provided for shall be guilty of a felony and all other provisions shall be misdemeanors. The words "the excise tax," by the use of the word "tax" in the singular number and by the use of the word "the," apparently limit the reference to the specific tax provided in the Act. It therefore seems to me that the sale of intoxicating liquors without license in a wet county would, under the

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statute, be a misdemeanor instead of a felony if the liquors sold have attached to the containers the proper stamps. If, however, the liquors are sold without the required stamps affixed to the containers, I think the same would be a violation of the excise tax requirement and therefore a felony under the statute.

September 23, 1937.

**INTOXICATING LIQUORS—POSSESSION MOONSHINE WHISKEY
IN DRY COUNTIES—PENALTY**

Dear Sir:

I am in receipt of your letter of the 16th instant, the body of which reads as follows:

"Upon the request of officials from several counties of the State of Florida I will appreciate it if you will give me your opinion as to whether it is a violation of the law for a person to possess in a dry county intoxicating liquors, commonly known as moonshine whiskey, without the containers bearing the liquor stamp and will also appreciate it if you will advise me the maximum penalty for same."

Your inquiry will be considered under Chapter 16,774, Acts of 1935, and Chapters 18,015 and 18,016 of 1937.

CHAPTER 16,774 OF 1935.

The title of Chapter 16,774 reads as follows:

"AN ACT Regulating and Taxing the Manufacture, Distribution and Sale of Beverages Containing More Than One Per Centum of Alcohol, Creating and Providing for a State Beverage Department, Providing Penalties for the Violation of this Act and Repealing Existing Laws Concerning Said Beverages."

Paragraph (i), Section 11 of Chapter 16,774 relates to transportation and possession of beverages as to the sale of which a stamp tax is imposed when the containers do not have such stamps attached. This paragraph, in so far as the same relates to possession, appears to be superseded by Section 5 of Chapter 18,015, Acts of 1937, which is later herein considered.

Your attention is called to the last paragraph of Section 9 of Chapter 16,774, as amended by Section 10 of Chapter 18,015, Acts of 1937, reading as follows:

"It shall be unlawful for any vendor, club or caterer to purchase any beverages herein defined requiring stamps which are not stamped and it shall be unlawful for any vendor or caterer

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to sell or have in his place of business or storage building or room, or for any club to serve or distribute or have in its club house or club rooms, any beverages requiring stamps which are not stamped."

Any vendor, caterer or club violating said Section by possessing beverages requiring stamps, when the same are not stamped, would appear to be subject to imprisonment in the State Penitentiary for a term of not less than one year or more than five years; or by both such fine and imprisonment, under Section 15 of Chapter 16,774, which provides such a penalty for a violation of the provisions of said Act concerning the excise tax.

This is upon the assumption, without passing upon the same, that said quoted provision is valid under the title to Chapter 16,774.

I may say that the above quoted provision applies more particularly to wet counties but it appears possible that the same could apply in dry counties when clubs in such counties have in their club houses or rooms any beverages requiring stamps which are not stamped.

CHAPTER 18,015 OF 1937

Your attention is called to Section 5 of Chapter 18,015, Acts of 1937, which as before stated, appears to supersede Paragraph (1), Section 11 of Chapter 16,774 of 1935 as to possession and reads as follows:

"It shall be unlawful for any person to possess within this State any beverage containing more than 1% of alcohol, as to the sale of which beverage an excise stamp tax is required to be paid, unless the immediate container of such beverage shall have affixed to it the Florida excise liquor stamp required to be affixed thereto. Provided that this Section shall not apply to manufacturers or distributors licensed under the Beverage Act of 1935, or to common carriers. Provided, further this Section shall not apply to persons possessing not in excess of one gallon of such beverages, provided the beverage shall have been purchased by said possessor outside of the State of Florida in accordance with the laws of the place where purchased and shall have been brought into this State by said possessor; the burden of proof that such beverages were purchased outside the State in accordance with the laws of the place where purchased shall in all cases be upon the possessor of such beverages."

Your attention is also called to the title of said Act, which is practically identical with the title to Chapter 16,774, above quoted, except for certain additions thereto.

Section 14 of said Chapter 18,015 is the penalty section and reads as follows:

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"Unless otherwise provided the violation of any of the provisions of this Act shall be a misdemeanor and shall be punished as such."

Your attention is further called to Section 7104, Compiled General Laws of Florida, 1927, which provides that the punishment for commission of crimes other than felonies in this State, when not otherwise provided by statute or when the penalty provided by such statute is ineffectual because of constitutional provisions or because the same is otherwise illegal or void, shall be a fine not exceeding \$200.00 or imprisonment not exceeding 90 days, or by both at the discretion of the court.

Assuming, but not passing upon, the validity of said Section 5 of Chapter 18,015 under the title to said Act, it would appear that any one violating said Section would be subject to the penalty provided in Section 7104, Compiled General Laws of Florida, 1927, above mentioned.

CHAPTER 18,016 OF 1937

The title of Chapter 18,016 makes it unlawful to sell intoxicating liquors, wines or beer in counties that have voted against the sale of such intoxicating liquors, wines or beer or to keep or possess such beverages in any such county with intent to sell or dispose of same unlawfully, or to keep or to maintain a place in any such county where such beverages are sold; to provide penalties for violations of the said Act so made unlawful, etc.

Section 2 of said Act reads as follows:

"That it shall be unlawful for anyone to keep, or possess, intoxicating liquors, wines or beer in any county that has voted against the sale of such intoxicating liquors, wines or beer with intent to sell or dispose of them unlawfully."

Section 7 of said Act provides in all prosecutions for violation of the Act proof that the liquor in question was and is known as whiskey, moonshine whiskey, shine, rum, gin, brandy or other similar name or names shall be prima facie evidence that such liquor is intoxicating and contains more than 3.2% of alcohol by weight.

Section 4 of said Act penalizes the persons who sells any intoxicating liquors, wines or beer in any such county that has voted against the sale thereof, or who keeps or possess the same in any such county with intent to sell or dispose of the same unlawfully. The punishment provided is a fine not exceeding \$500.00 or imprisonment in the County Jail for not more than six months, or by both such fine and imprisonment in the discretion of the Court.

You will note that under the text as well as the title of this Act

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possession is penalized only when such possession is with intent to sell or dispose of the same unlawfully and bare possession without such intent does not appear to be made unlawful or to be penalized by said Act. You will note also that this Chapter relates only to counties which have voted against the sale of intoxicating liquors, wines or beer.

While your inquiry relates only to the possession of moonshine whiskey in dry counties when the containers do not bear the required stamps, I have endeavored to consider all intoxicating liquor statutes now effective with reference to illegal possession of all intoxicating liquors in all counties whether wet and/or dry counties.

April 8, 1938

**INTOXICATING LIQUORS—SEARCH WARRANTS—SERVICE BY
SUPERVISOR—SEARCH WITHOUT SEARCH WARRANT**

Dear Sir:

I am in receipt of your letter of the 9th ultimo containing four questions relating to Chapter 16,774, Laws of Florida, Acts of 1935, and subsequent beverage statutes. Your questions will be recited and answered in numerical order:

1. "May a search warrant be served at night if the issuing Magistrate expressly authorizes it?"

This question should be answered in the affirmative under the provisions of Section 8512, Compiled General Laws of Florida, 1927.

2. "May a Supervisor of this Department serve a Search Warrant if same is directed to him?"

This question should be answered in the affirmative under Section 1 of Chapter 16,774, Laws of Florida, Acts of 1935, which provides that "such Supervisors shall have all the powers of Deputy Sheriff in the enforcement of the beverage laws of this State and in the prosecution of offenders against such laws." See also Section 1, Chapter 18,015, Laws of Florida, Acts of 1937, which provides "said Supervisors shall have the same powers and duties as the Supervisors appointed under the Beverage Act of 1935." See also Section 13-A of Chapter 18,016, Laws of Florida, Acts of 1937, which provides that for the purpose of enforcing the provisions of this Act the Director and Supervisors of the State Beverage Department are hereby authorized and directed to exercise or perform all powers and duties vested in the several Sheriffs and their Deputies in the State of Florida under the provisions of this Act."

3. "May Supervisors of this Department serve arrest warrants?"

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This question should be answered in the affirmative for the same reason that Question 2 is answered in the affirmative.

4. "May search be made without Search Warrant for spiritous, vinous or malt liquors as provided for in Section 7598, C. G. L., 1927, (see Section 8517, C. G. L., 1927)?"

This question should be answered in the negative since Section 7598, formerly Section 3561, General Statutes of 1906, was repealed by Section 19 of Chapter 16,774, Laws of Florida, Acts of 1935.

In connection with the above, I think it well to call to your attention recent holding of our State Supreme Court in the case of *Thurmon vs. State*, 116 Fla. 426, 156 So. 484, the first headnote of which reads as follows:

"Search of dwelling house, store, or other structure without warrant is prohibited by State Constitution (Const. Declaration of Rights, Sec. 22)."

June 12, 1937

INTOXICATING LIQUORS—SEVEN PER CENT OF COLLECTIONS
ALLOWED FOR EXPENSES UNDER CHAPTER 18015, ACTS 1937

Dear Sir:

I have your letter of the 11th instant, the body of which reads as follows:

"Section 2 of Chapter 18015, Acts of 1937, says in part 'The expense of the Beverage Department shall not in any year exceed 7% of the taxes collected under the Beverage Act of 1935, and under this Act.'

"Section 17 of the same Law says, 'This Act shall take effect immediately upon its becoming a Law.'

"This Bill was signed by the Governor and filed in the office of the Secretary of State June 5th, 1937. Please give me your opinion as to whether this Department is entitled to 8% of its collections for expenses as provided for in next to the last paragraph of Section 1, Chapter 16,774, Acts of 1935, on those funds collected under the old tax rate, or should we take only 7% of collections made on and after June 5th, 1937?"

In reply, I beg to say that under the provisions of Section 2 of Chapter 18015, Acts of 1937, which under Section 17 of said Act become effective on June 5, 1937, the date of approval, the Beverage Department will be entitled to only seven per cent. of collections under the 1935 Act and under chapter 18015, Acts of 1937, from June 5, 1937.

BEVERAGE DEPARTMENT

February 8, 1938.

INTOXICATING LIQUORS—STAMP TAX ON SALES OUT OF STATE

Dear Sir:

I am in receipt of your letter of the 5th instant, in which you advise the State of Georgia has passed a law providing for local option with reference to the sale of intoxicating liquors. You make inquiry if the said State by virtue of said Act should be considered a wet State and make inquiry with reference to whether or not intoxicating liquors shipped from Florida to Georgia should bear the stamp tax under our beverage statutes.

Section 9 of Chapter 16,774, Laws of Florida, Acts of 1935, amended by Chapter 18,015, Laws of Florida, Acts of 1937, provides in paragraph (d) that as to beverages containing 14% or more of alcohol by weight, except wine, there shall be paid by all manufacturers and distributors a tax at the rate of \$1.20 per gallon, said tax to be evidenced by stamps. I quote you a provision of said Section 9 relating to the subject of your inquiry reading as follows:

"The excise taxes provided for in this Section shall be paid as to all such beverages sold within this State. No excise tax shall be required to be paid by manufacturers or distributors as to the sale of beverages which are actually delivered by such manufacturer and/or distributor to persons outside of the State of Florida and such deliveries are actually made outside the State of Florida in places where the sale of such beverages is authorized by law to persons authorized by the laws of the places where such delivery is made to purchase and receive such beverages in such places. * * *

You will note that the above statute refers to "places" and not to States. Under the Georgia local option law, as I understand it, only such counties as shall vote in favor of the sale of intoxicating liquors become what is usually termed wet counties. Any counties failing to vote in favor of such sales necessarily remain dry counties.

In view of the above it is my opinion that all intoxicating liquors should bear the stamp tax required under our statutes when shipped and delivered to any territorial unit such as a county in any State when sale of such intoxicating liquors may not, under the laws of such State, be legally made in such county or territorial unit.

August 19, 1937.

INTOXICATING LIQUORS—WINE TAX—DIFFERENTIAL—PARA-
GRAPH "b" OF SECTION 9 OF CHAPTER 16,774 OF 1935,
AS AMENDED BY CHAPTER 18,015 OF 1937

Dear Sir:

I am in receipt of your letter of the 5th instant with reference to

BEVERAGE DEPARTMENT

the differential wine tax provided for in paragraph "b", Section 9 of Chapter 16,774, as amended by Section 10 of Chapter 18,015, Acts of 1937. You make inquiry if the difference should be collected on each type of tax separately or should be collected when the total of all types of taxes exceeds ours.

I quote that part of said paragraph "b" relating to the differential wine tax as follows:

"There is hereby levied upon wines manufactured in other states, having lost its interstate character and stored or offered for sale in this State, and upon dealers therein, a differential wine tax, as defined and limited herein.

"This Act shall apply to all wines that have lost their interstate character and are stored or offered for sale in this State that are manufactured in a State which levies or imposes a greater occupational, excise, gross or net receipts or sales tax, of any tax based upon the quantity, or the cost or price of said wines, on wines manufactured in Florida, than it levies or imposes in respect to wines manufactured within such State. The difference between the tax or taxes so levied in respect to wines manufactured in said State and like wines manufactured in the State of Florida, shall be deemed a differential tax within the meaning of this Act."

You will note the above quoted statute relates to occupational licenses, excise, gross or net receipts or sales tax, or any tax based upon the quantity, or the cost or price of said wines as a difference between such taxation in this State and other States.

You will note that the several taxes mentioned are so incongruous that I find no method for combining the same to secure a net result. I am, therefore, of the opinion that collections should be made on each type separately.

SECTION 3

BOARD OF CONTROL

June 28, 1937.

ELIGIBILITY OF MEMBERS FOR APPOINTMENT AS MEMBER OF COUNTY BOARD OF PUBLIC INSTRUCTION UNDER ARTICLE XVI, SECTION 15 OF FLORIDA CONSTITUTION

Dear Sir:

In your capacity as a member of the Board of Control of the State of Florida you request my opinion as to whether or not a member of the Board of Control is eligible for appointment as a member of a County Board of Public Instruction. You particularly call my attention to Article XVI, Section 15 of the Florida Constitution, which reads as follows:

"No person holding or exercising the functions of any office under any foreign Government, under the Government of the United States, or under any other State, shall hold any office of honor or profit under the government of this State; and no person shall hold, or perform the functions of, more than one office under the government of this State at the same time: Provided, Notaries Public, militia officers, county school officers and Commissioners of Deeds may be elected or appointed to fill any Legislative, executive or judicial office."

Under the provisions of Article XVI, Section 15, County school officers may be elected or appointed to fill any legislative, executive or judicial office. It would, therefore, follow that this authorizes one person to be a County school officer and also a legislative, executive or judicial officer at the same time, and that one who is already a legislative, executive or judicial officer is eligible to appointment or election as a county school officer. A member of a County Board of Public Instruction is clearly a "county school officer" under the provisions of this section of the Constitution.

June 28, 1937.

SCHOOL OF FORESTRY, ESTABLISHMENT AND APPROPRIATION

Dear Sir:

This refers to your favor of the 25th instant, relative to Chapter 18403, Acts of 1937, which is an Act providing for the establishment of the School of Forestry in the University of Florida, and appropriating funds therefor.

Section 1 of this Act makes an appropriation of \$25,000 out of the General Revenue Fund of the State of Florida, and this amount, or so much thereof as may be found necessary, is made available to the

BOARD OF CONTROL

Board of Control for the purpose of establishing and creating a school of Forestry in the University of Florida for the teaching of forestry.

This Act also provides for a continual appropriation, that is, there is an annual appropriation of \$25,000 for the year 1937 and a like sum for the same purposes for each year thereafter.

It is my opinion that under this appropriation the Board of Control is now authorized to proceed to carry out the purposes of the Act.

September 14, 1937.

**UNIVERSITY OF FLORIDA—LIABILITY IN OPERATING ELEVATOR
IN JOHN F. SEAGLE BUILDING UNDER WORKMEN'S
COMPENSATION ACT OF EMPLOYEES ONLY**

Dear Sir:

This is in reply to your letter of September 10th in which you request my opinion as to the liability of the University of Florida in operating the elevator in the John F. Seagle Building at the University. You state that the University is a self-insurer under the provisions of the Florida Workmen's Compensation Act.

The only liability on the part of the University of Florida is that which is created under the provisions of the Florida Workmen's Compensation Act. That liability would be limited to compensating *employees* injured in the course of their employment. There would be no enforceable liability insofar as the general public is concerned for the reason that the State of Florida and its agencies are not liable for torts which they may commit.

SECTION 4
BOARD OF HEALTH

BUREAU OF VITAL STATISTICS

November 26, 1938.

AUTHORITY OF BOARD TO SUBSTITUTE NEW BIRTH CERTIFICATE—AUTHORITY OF BOARD TO ISSUE NEW BIRTH CERTIFICATE IN CASE OF LEGAL ADOPTION

Dear Sir:

This is in reply to your communication of November 9, 1938, wherein you ask for my opinion on two questions. The first reads as follows:

"1. Has the State Board of Health under any general authority conferred on it by any existing law the right to substitute a new birth certificate for the existing birth certificate where an illegitimate child is legitimized by the subsequent marriage of its parents?"

I am of the opinion that this question must be answered in the negative. The reasons for my conclusion are set forth in an opinion of former Attorney General Rivers Buford, dated December 20, 1924, copy of which is enclosed.

The second question reads as follows:

"2. Has the State Board of Health any authority to issue a new certificate in the case of legal adoption of a child?"

I am of the opinion that this question must also be answered in the negative, for the reason that the statutes do not purport to authorize such a procedure.

March 8, 1937.

BUREAU OF VITAL STATISTICS—SECTION 3301, C.G.L. AUTHORIZES USE OF FEES FOR CONSTRUCTION OF ADDITION BUILDING

Dear Sir:

This is in reply to your inquiry concerning the construction of an addition to the State Board of Health Building to house the Bureau of Vital Statistics, construction to be financed from funds accumulated from fees derived from marriage and divorce records.

Section 3269, Compiled General Laws of Florida, 1927, requires that the State Board of Health shall provide for the Bureau of Vital Statistics suitable offices which shall be properly equipped with fire-proof vault and filing cases for the permanent and safe preservation of official rec-

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ords. Section 3301, Compiled General Laws of Florida, 1927, provides that a true and correct account of all sums transmitted to the Bureau of Vital Statistics by the several County Judges of the State under the provisions of Section 3296, as well as all sums received under the provisions of Section 3299, shall be transmitted monthly along with such funds, to the State Treasurer. The State Treasurer is required to place the funds to the credit of the State Board of Health for the use of the Bureau of Vital Statistics. The fees to which you refer, particularly the marriage fees, are specifically required to be handled in this manner and are available for the use of the Bureau of Vital Statistics.

It is, therefore, my opinion that the State Board of Health would have the right to use the fees referred to in Section 3301, Compiled General Laws of Florida, 1927, for the purpose of constructing an addition to the State Board of Health Building to house the Bureau of Vital Statistics. In constructing such an addition the State Board of Health would be fulfilling its duty set forth in Section 3269 to provide suitable offices for the Bureau of Vital Statistics.

September 15, 1937.

BUREAU OF VITAL STATISTICS—DISPOSITION OF FEES COLLECTED FOR PHOTOSTATIC COPIES OF BIRTH AND DEATH CERTIFICATES

Dear Sir:

You request my opinion as to whether or not the money collected in fees for photostatic copies of birth and death certificates and for birth and death records furnished the Federal Bureau of Census may be used to pay salaries of employees of the Bureau of Vital Statistics.

The following is Section 3291, Compiled General Laws of Florida, 1927:

"The State registrar shall, upon request, supply to any applicant a certified copy of the record of any birth or death registered under provisions of this Chapter, for the making and certification of which *he shall be entitled to a fee of fifty cents, to be paid by the applicant.* And any copy of the record of a birth or death, when properly certified by the State registrar, shall be prima facie evidence in all courts and cases of the facts therein stated. For any search of the files and records when no certified copy is made, *the State registrar shall be entitled to a fee of fifty cents for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant:* Provided, that the State Board of Health may waive any or all of the fees required under this section. And the State registrar shall keep a true and correct account of all fees by him received

BOARD OF HEALTH

under these provisions, and turn the same over to the State Treasurer. (Id. No. 21). (*Italics ours.*)

The above statutory provisions do not clearly indicate the purpose for which such fees may be expended. The words of the statute hereinabove italicized, however, evidence an intent on the part of the Legislature that such fees should not go to the General Fund but should be available for defraying expenses of operating the office of the State registrar of vital statistics.

It is my opinion therefore that such fees should be kept by the State Treasurer in a separate fund available for the purpose of paying salaries of employees of the Bureau of Vital Statistics.

April 14, 1938.

**BUREAU OF VITAL STATISTICS—REGISTRATION OF CHILD BORN
AFTER DIVORCE OF PARENTS**

Dear Sir:

I am in receipt of your letter of the 13th instant, the body of which reads as follows:

"Will you please give me a ruling on what procedure to use in the following circumstances.

"Mrs. A. was divorced from her husband in October, 1936. In February, 1937, a child was born to Mrs. A. Her husband says the child is not his. In the divorce, Mrs. A.'s maiden name was not restored. She requested the birth certificate for the child bear her maiden name. The question is, should this child be recorded as legitimate or not?

"On January 22, 1936, you advised the State Health Officer in a case which, however, it seems to me, is not parallel to this.

"I am holding up the filing of this certificate until receiving your ruling."

In reply I beg to say under the circumstances enumerated in your letter, it is my opinion that the child should be recorded as legitimate and should bear the name of the woman's husband from whom she was divorced only a short time before the birth of the child.

This opinion is in line with the former opinion of this office, under date of January 22, 1936, addressed to the State Health Officer, the last paragraph of which reads as follows:

"In reply I beg to say that in my opinion a child born in wedlock should be presumed to be the legitimate child of the mother and her then wedded husband and should be so registered."

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September 1, 1937.

NARCOTIC DRUG LAW—CHAPTER 16057 OF OF 1933, AS AMENDED
BY CHAPTER 17129 OF 1935—SECTIONS 3397 (1) TO 3397

(22), 7699 (1), 8364 (1) 8374 (2), C. G. L.

1936 SUPPLEMENT.

RE: WARRANTS AND PRISONERS

Dear Sir:

I am in receipt of your letter of the 16th ultimo referring to the Narcotic Drug Act, Chapter 16,087, Acts of 1933, as amended by Chapter 17,129 of 1933, now Sections 3397 (1) to 3397 (22), 7699 (1), 8364 (1) and 8374 (2), Compiled General Laws of Florida, 1936 Supplement. You ask four questions as follows:

"Are officers of this bureau permitted to obtain warrants of arrest in one county and to serve in another county, to transport prisoners from one county to another and are the sheriffs of the county permitted to collect the usual fees for such services?

"Should an officer of this bureau make the return on the warrant of arrest and sign as such officer of this bureau?

"During the investigation of a violation of the narcotic law when the party is located in a county other than the one the violation occurred in, is the officer permitted to arrest without warrant and transport the prisoner to the county in which the violation occurred and obtain warrant after arrest.

"Are county jails required to accept prisoners from officers of this bureau without warrant or commitment from judge, most of our arrest are made at night when it is impossible to obtain a warrant or a commitment?"

Section 3397 (20), Compiled General Laws of Florida, 1936 Supplement, reads as follows:

"It is hereby made the duty of the State Board of Health, its agents, inspectors, officers and representatives, and all peace officers of the State, and all prosecuting attorneys, to enforce all provisions of this law, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, this State, and all other States relating to narcotic drugs. All officers, agents, inspectors, and representatives of the State Board of Health engaged in the enforcement of the provisions of this law, shall in addition to their respective positions be designated as 'State police' and shall have the same authority as a deputy sheriff, to bear arms concealed or otherwise, and to make searches,

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seizures, and to arrest with or without warrants for any violation of the provisions of this law, and/or any other laws of the State of Florida: Provided, however, that such officers, agents, inspectors, and representatives, shall first furnish a bond of not less than one thousand dollars approved by the State Board of Health, and made payable to the Governor of this State."

Your first question should be answered in the affirmative if the officers mentioned above complied with the above statute by furnishing the bond required therein.

Your second question, in my opinion, should be answered in the affirmative if the warrant was served by such officer.

Your third question, in my opinion, should be answered in the affirmative, but it is proper for me to advise you to always secure a warrant, if possible, in advance of any arrest.

Question four, in my opinion, should be answered in the negative unless the prisoner waives any right he might claim in such connection. I am enclosing herewith copy of communication on the same subject by former Attorney General Fred H. Davis, late Justice of the Supreme Court, which appears on page 311 of the Attorney General's Biennial Report for 1929-1930.

October 7, 1938.

**NARCOTIC DRUGS—PRESCRIBING AND DISPENSING—PHYSICIANS
AND SURGEONS—NATUROPATHS NOT AUTHORIZED TO
PRESCRIBE AND DISPENSE—CHAPTER 12,286 OF
1927, AND CHAPTER 16,087 OF 1933**

Dear Sir:

On July 27, 1938, I wrote you relative to the above captioned matter, the body of said letter reading as follows:

"I am in receipt of your letter of the 22nd instant referring to my letter of the 14th inst., transmitting to you a letter from * * * District Supervisor, Federal Bureau of Narcotics, Atlanta, Georgia, under date of the 18th ultimo, making inquiry as to whether a naturopathic physician is lawfully entitled to prescribe or dispense narcotic drugs in this State.

"You state that this matter will no doubt come up from time to time and request our advice in the premises.

"In this connection, I call your attention to Section 7 of said Chapter 16087, Acts of 1933, which states that a *physician*

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or a dentist, in good faith and in the course of his professional practice only, may prescribe narcotic drugs.

"Section 1 of the same Act defines physician as follows:

Physician, means a person authorized by law to practice medicine in this State and any other person authorized by law to treat sick and injured human beings in this State and to use, mix or otherwise prepare narcotic drugs in connection with such treatment.'

"Sections 3469 to 3486, Compiled General Laws of Florida, 1927, relate to naturopaths, and in Section 3469 you will note the following provision:

'Provided, however, that nothing in this Chapter shall be held or construed to authorize any naturopathic physician licensed hereunder to practice materia medica or surgery or chiropractic * * *'

"In view of the above and in agreement with your expressed views, I beg to say in my opinion naturopathic physicians are not, under our law, authorized to prescribe or dispense narcotic drugs in this State."

Attention has been called to a letter written by former Attorney General Fred H. Davis, under date of January 3, 1931, appearing on page 424 of the Biennial Report of the Attorney General for the years 1931-1932. I have been requested to review my letter to you and take into consideration the said letter of Honorable Fred H. Davis, the pertinent part of which letter reads as follows:

"This is in answer to your letter of December 15th asking my opinion as to whether a naturopathic physician would be legally within his rights in prescribing and giving botanical preparations and their compounds, and also asking my opinion as to whether or not naturopathic physicians have the right to legally sign death and health certificates and other papers required as evidence by insurance companies and others.

"I will answer your several questions as follows:

"1. Section 1 of Chapter 12286, Acts of 1927, includes the practice of phyto-therapy as being included within the practice of naturepathy. The question of whether or not a naturopathic physician would have the right to prescribe and give botanical preparations in his practice will depend entirely upon whether or not the designated term 'phyto-therapy' embraces the practice of giving such botanical preparations and compounds.

"In other words, the naturopathic physician has the legal

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right to practice phyto-therapy, and phyto-therapy in its proper definition as understood among members of the medical profession includes the giving of botanical preparations and compounds, then the right of a naturopathic physician to practice phyto-therapy includes the right to do what phyto-therapy includes, namely, giving and prescribing botanical preparations and compounds.

"In cases like this, the courts resort to the customs and circumstances of the profession involved, in order to ascertain what is embraced within a technical term such as phyto-therapy.

"2. While Section 12 of Chapter 12286, Acts of 1927, requires that doctors of naturopathy shall observe and be subject to all State, county and municipal regulations in regard to the control of contagious and infectious diseases, the reporting of births and deaths, and any and all matters pertaining to the public health in the same manner as is required of other practitioners of the healing art, *this Section does not of itself extend the right of practitioners of naturopathy to invade the field of other schools of medicine.* The purpose of Section 12 was merely to require naturopathic doctors to report a birth or death which might occur within their observation as practitioners.

"I find nothing in Chapter 12286, Acts of 1927, relating to naturopathic doctors, which authorizes such practitioners to undertake to prescribe for, diagnose, or treat contagious or infectious diseases. Consequently, since the signing of a health certificate concerning the existence or non-existence of a contagious or infectious disease by a doctor would necessarily embrace a diagnosis by such doctor or whether or not the disease existed, no doctor who is without authority of law to diagnose and treat a contagious or infectious disease has the right to sign a health certificate required by law to show the existence or non-existence of such disease."

I have underscored certain parts of my letter as well as that of Honorable Fred H. Davis.

The statutes involved are Chapter 12,286 of 1927, which is an Act defining naturopathy and providing for and regulating the practice of naturopathy, and Chapter 16,087, Acts of 1933, which is an Act to regulate the prescribing and dispensing, et cetera, of narcotic drugs in the State of Florida.

In order that all parties interested might be heard, I have given a public hearing at which were present yourself, as State Health Officer, and a number of naturopathic physicians with their attorneys. I have also been handed a brief by counsel for the naturopathic physicians and

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have been furnished certain memoranda through yourself and the State Board of Health.

In my construction of the second paragraph of the above quoted letter of Honorable Fred H. Davis, I believe there was a typographical error and that the word "if" was inadvertently omitted after the word "and" where he said "and phyto-therapy in its proper definition as understood among members of the medical profession includes the giving of botanical preparations and compounds." Supplying the word "if" after the word "and" and before the word "phyto-therapy" seems necessary to make a basis for his conclusion as expressed and framed as follows: "*then* the right of a naturopathic physician to practice phyto-therapy includes the right to do what phyto-therapy includes, namely, giving and prescribing botanical preparations and compounds."

It will be noted that the opinion of former Attorney General Fred H. Davis makes no mention of the proviso in Section 1 of Chapter 12,286, now Section 3469, Compiled General Laws of Florida, 1927, above quoted, which provides that nothing in Chapter 12,286 shall be held or construed to authorize any naturopathic physician licensed thereunder to practice materia medica, surgery or chiropractice. It cannot well be assumed that he overlooked the proviso in the very Section he was considering, and his conclusion must be considered as intended to be subject to and limited by such provision. The said provision in the Act, relating specifically to the practice of naturopathy, appears to prohibit naturopathic physicians from prescribing and dispensing narcotic drugs since narcotics are embraced within the term materia medica and since the Act in no place authorizes the practice of materia medica or the prescribing or dispensing of narcotic drugs.

While Section 1 of Chapter 12,286, Acts of 1927, now Section 3469, Compiled General Laws of Florida, 1927, recites generally that naturopathic practice employs, among other agencies, phyto-therapy (which relates to the use of plants in the treatment of diseases) such general recital does not seem to authorize naturopathic physicians to prescribe and dispense narcotics in view of the proviso in said Section which we have quoted to the effect that they are not authorized to practice materia medica.

In this connection, your attention is called to Section 6 of Chapter 12,286, Acts of 1927, now Section 3474, Compiled General Laws of Florida, 1927, prescribing a required course of study for naturopathic physicians, in which no mention is made of phyto-therapy or materia medica. Neither do the subjects include botanical compounds generally or narcotics specifically. The failure to include phyto-therapy or materia medica and the failure to include the study of botanical compounds in such course of study is in harmony with the above mentioned proviso in Section 1 of said Act that nothing in the Chapter should be held or construed to

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mean any naturopathic physician is authorized to practice materia medica.

While Section 7 of Chapter 16,087, Acts of 1933, now Section 3397 (8), Compiled General Laws of Florida, Permanent Supplement, relating to narcotics provides that a physician or a dentist in good faith and in the course of professional practice only may prescribe and dispense narcotic drugs, we must keep in mind Section 1 of said Act, now Section 3397 (2), Compiled General Laws of Florida, Permanent Supplement, above quoted, which defines the word "physician." The only persons recognized as physicians under said Act are those authorized to *practice medicine and those authorized by law to treat sick and injured human beings and to use, mix or otherwise prepare drugs in connection with such treatment*. Under such definition we must revert to the Naturopathic Act, Chapter 12,286 of 1927, in which we find no provision for naturopathic physicians to use narcotic drugs, but as before mentioned we find the specific provision that such physicians are not authorized to practice materia medica.

After a careful consideration of all matters presented in connection with the above, it is still my opinion that naturopathic physicians are not, under our law, authorized to prescribe or dispense narcotic drugs in this State.

BOARD OF HEALTH MISCELLANEOUS

April 13, 1937.

CONTRIBUTIONS FOR RESEARCH WORK MAY BE DEPOSITED IN STATE TREASURY AND DISBURSED THROUGH THE OFFICE OF THE COMPTROLLER

Dear Sir:

This is in reply to your letter of April 13 in which you request my opinion as to whether or not contributions, donations and financial assistance from the Rockefeller Foundation tendered for research work in Malaria, the study of hookworm diseases and other services may properly be deposited with the State Treasurer and disbursed through the office of the Comptroller in accordance with a resolution adopted at the meeting of the State Board of Health held in St. Petersburg on April 6, 1937.

The said resolution was adopted pursuant to the authority conferred upon the State Board of Health under the provisions of Section 3153, Compiled General Laws of Florida, 1927. Section 3153 reads as follows:

"The State Board of Health shall have the general supervision of the public health of the State of Florida, and shall have power to make, promulgate and enforce such rules and regula-

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tions as may be necessary for the preservation of the same; and to prevent the importation or spread of hydrophobia."

It is my opinion that Section 3153 is sufficiently comprehensive to authorize the procedure provided for in said resolution of the State Board of Health.

October 18, 1938.

**DENTISTS NOT REQUIRED TO REGISTER UNDER CHAPTER 12005,
ACTS 1927.**

Dear Sir:

This will acknowledge receipt of your letter of October 17 wherein you request my opinion as to whether or not dentists should be required to register under the provisions of Chapter 12005, Acts of 1927, entitled:

"An Act to Require the Registration of All Physicians, Surgeons, Osteopaths, Chiropractics, Naturopaths, Midwives and All Others, Practicing the Medical and/or Material Healing Art in the State of Florida."

You state that you have been acting under an opinion rendered by the late Fred H. Davis, who, as Attorney General, on January 11, 1928, construed this Statute. You state further that the opinion is not definite and that the question has been raised by a dentist who desires to register and believes that the opinion is authority for same.

I wish to advise that I have examined the opinion that you refer to and I believe that the construction you have placed upon this decision is entitled to great weight, and the fact that for a period of about ten years this construction has not been questioned, is also entitled to much consideration. I think that this is strengthened by the fact that when the Legislature of 1931 enacted Chapter 14708, it did not provide for a registration with the State Board of Health but did provide for what is in effect, a registration with the Board of Dental Examiners.

The Acts of the Legislature of 1921 and 1927 did provide for physicians to register directly with the State Board of Health. See Section 3409, Compiled General Laws of 1927.

I also do not believe that the purpose of the registration act that you have referred to was to require the registration of dentists because their practice is so essentially different from those enumerated in the Act.

I, therefore, am of the opinion that your question should be answered in the negative.

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February 4, 1938.

**DISPOSITION OF INTEREST ON TRUST FUNDS UNDER WILL OF
HON. ALBERT W. GILCHRIST.***Dear Sir:*

I am in receipt of your letter of the 17th instant making inquiry with reference to disposition of interest on trust funds held by the State Board of Health under the Will of the late Honorable Albert W. Gilchrist, former Governor of Florida, which provides that such interest shall be used by the State Board of Health of Florida and the State Health Officer in ameliorating the condition of patients attending the Florida State Hospital for Indigent Crippled Children.

You enclose communication from Messrs. L'Engle & Shands, signed by Hon. E. J. L'Engle, under date of May 12, 1936, passing upon the authority of the State Board of Health to transmit such funds to the Florida Crippled Children's Commission. The opinion states from information given it appears that a hospital for crippled children, authorized by Chapter 6133, Acts of 1911, was never established and that the said Act was repealed by Chapter 13620 of 1929, which created The Florida Crippled Children's Commission. Mr. L'Engle in his opinion, after quoting that part of the Will of Honorable Albert W. Gilchrist relating to the instant matter, stated as follows: "The above provision of the Will evidences a general charitable intention by the testator, and we think that the Will, properly construed, means that the testator intended the Florida State Hospital to be merely the means or instrument through which he intended to effect the charity. If this be so, it seems to us that the Crippled Children's Commission is the proper agency through which this trust should be administered."

The opinion goes on to state that the power to determine this question, however, does not rest in the trustee of a charitable trust and that it is proper in such a case for the trustee to apply to the Court for authority to divert the income of the trust to a beneficiary other than the one named in the trust.

I wish to say I agree with the above mentioned opinion of Messrs. L'Engle & Shands, signed by Hon E. J. L'Engle.

Answering your specific inquiry as to the matter of Court costs, it is my opinion that the same may be paid from the interest funds proposed to be diverted to a proper beneficiary.

October 29, 1937.

**HEALTH OFFICER MAY ACCEPT \$50 PER MONTH FROM BOARD
FUNERAL DIRECTORS AND EMBALMERS.***Dear Sir:*

I have your letter of October 27 wherein you request an opinion as

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to whether or not "it will be legal for me to accept a salary of \$50 per month from the Board of Funeral Directors and Embalmers, of which I am President."

You state that the office of president rotates yearly from one member to another and that this year was your turn to be president and that this office carries a salary of \$50 per month for service rendered.

I have examined Chapter 17950 which became a law on June 10, 1937, and I find that Section 2 provides:

"That a State Board of Funeral Directors and Embalmers for the State of Florida, *to consist of the State Health Officer and four other members to be appointed by the Governor is hereby created, with the advice and consent of the Senate. Such Board shall consist of the State Health Officer of the State of Florida and four practical and practicing licensed funeral directors and embalmers * * **" (*Italic supplied.*)

And Section 6 provides:

"That said Board at its annual meetings shall organize and select from among its members a President, a Secretary and Treasurer. Such officers shall serve for a period of one year and until their successors are elected and qualified. The President and Secretary of the said Board shall receive a *just and fair salary for services required* and rendered, to be fixed by the Board. * * *" (*Italic supplied.*)

I further find that Section 17 provides:

"That all fees collected under the provisions of this Act shall be paid to the Secretary and Treasurer of the State Board of Funeral Directors and Embalmers to be used for the purpose of defraying the necessary expense of the said Board in the administration of this Act. * * *

"It shall be the duty of the said Board to make annually in writing a report to the State Comptroller of the State of Florida, containing a detailed statement of the manner and amounts of all its receipts and the nature of all of its expenditures. Any balance of money remaining over at the end of the year, after paying the necessary expenses of the Board, shall be held in an emergency fund to meet any extraordinary expense incurred in the proper administration of this Act, and for educational and extension purposes of the profession of funeral directing and embalming."

The first question to be considered is whether or not you are prohibited by Section 15 of Article XVI of the State Constitution from exer-

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cising the functions provided by this Act. The applicable part of said Section of the Constitution is:

" * * * and no person shall hold, or perform the functions of, more than one office under the government of this State at the same time. * * * "

This particular question has been before the Courts many times and the Supreme Court in the case of *Amos vs. Mathews*, 126 So. 308, Text page 335, in quoting from an earlier case said:

"In *Whitaker vs. Parsons*, 82 Fla. 352, 86 So. 347, this court held that it was competent for the Legislature to impose additional duties on the administrative officers of the executive department not inconsistent with their duties as defined in the Constitution; such duties being to serve on boards or commissions in conjunction with other officers who are provided for by statute, their commissions issued to them as constitutional officers being sufficient to cover any duties imposed upon them by law. The fact of imposing additional constitutional officers seems to have become securely imbedded in our governmental scheme, and has from time to time received the imprimatur of this court. *Whitaker vs. Parsons*, *supra*, which we think fully answers this phase of the case. See, also, *Lainhart vs. Catts*, 73 Fla. 735, 75 So. 47; *Hardee vs. State ex rel. Gaines*, 83 Fla. 544, 91 So. 909. The trustees of the internal improvement fund, board of commissioners of Everglades drainage district, Okeechobee flood control district, the railroad assessment board, the pension board, insurance commissioner, the "Blue Sky" board, state livestock sanitary board as first created, and others are common instances in which administrative boards have been composed of one or more constitutional state officers and been vested with additional governmental functions."

Just before this quotation the Court made this statement:

"State and county offices may be created and their duties defined by the Constitution or by statute and the Legislature may also impose additional powers and duties on both constitutional and statutory officers so long as such duties are not inconsistent with their duties imposed by the Constitution."

Articles XV, Section 1 of the Constitution provides for the establishment by the Legislature of a State Board of Health. Section 2 provides:

"The State Board of Health shall have supervision of all matters relating to public health with such duties, powers and responsibilities as may be prescribed by law."

It is, therefore, apparent that the duties imposed upon you as State

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Health Officer under Chapter 17950 of the 1937 Acts of the Legislature did not violate the quoted provision of our State Constitution establishing the State Board of Health and under the case of *Amos vs. Mathews*, supra, said Chapter 17950, only had the effect of imposing additional duties upon you as the State Health Officer.

The next question to be considered is whether or not you are entitled to the salary as President of the State Board of Funeral Directors and Embalmers. It is to be noted that the money derived for the payment of such salary is from fees collected under the provisions of said Senate Chapter 17950 and that it never becomes State money because as we have previously quoted, Section 17 provides that any balance remaining over shall be held in an emergency fund to meet any extraordinary expense incurred in the proper administration of this Act, and for educational and extension purposes of the profession of funeral directing and embalming.

The Supreme Court of Florida in the case of *Flood vs. State ex rel. Board of Commissioners of Dade County*, 129 So. 861, had before it in this case the contention that plaintiff

"under the law is not only clerk of the criminal court of record of Dade County, but that he is also clerk of the civil court of record and the court of crimes of said county and is by virtue of being so clothed entitled to the maximum compensation allowed under chapter 11954, Acts 1927, for performing the duties of each of said offices."

This particular Act limited the amounts which county officers could receive as compensation for their official duties and further provided:

" * * * that no such official shall under the foregoing computation of remuneration receive from the income so collected by him more than Seven Thousand Five Hundred (\$7,500.00) per year."

The clerk also made the contention that this Act was unconstitutional. The Supreme Court said:

"Section 27 of article 5 and section 6 of article 8 of the Constitution require the Legislature to 'fix by law' the compensation of county officers."

(We might say here that it also applies to State officers as well.)

"The act now before us (Chapter 11954, Acts 1927) fixes the compensation of county officers at a prescribed portion of the net income from the office. Such a basis of classification for compensating county officers was approved by this court in *State ex rel. Buford vs. Shepard*, supra."

BOARD OF HEALTH

Answering the contention that the clerk was entitled to the maximum Compensation allowed under Chapter 11954, Acts 1927, for performing the duties of each of said offices the Court said:

"The fact of his being constituted clerk of the civil court of record and clerk of the court of crimes of Dade County amounts merely to the imposition of extra duties on the plaintiff in error as clerk of the criminal court of record which the Legislature had a right to impose. *Whitaker vs. Parsons*, 80 Fla. 352, 86 So. 847; *Amos et al. vs. Matthews (Fla.)* 126 So. 308. None of these duties are inconsistent, and all fees and commissions collected by him in their performance should be reported as required by Chapter 11954, Acts 1927."

It might be said that this case would prevent you from accepting a salary as president of the State Board of Funeral Directors and Embalmers. However, in my opinion it would not for the reason that there is a vast difference in the facts. I will point out several of them. The fact that the plaintiff was clerk of both courts at the time the Act was passed limited his salary as such and the act by its terms prescribed "a maximum compensation for all county officers;" whereas, you are not a county officer nor were you a member of the Funeral Board until this Act was passed and although the Act of 1933 fixed your salary at \$4,000.00 per year and provided that this was the maximum amount you were to receive, this was not a limitation on a subsequent Legislature that would prevent it from enacting a law as it has done by Chapter 17950, Laws of 1937, under the terms of which you may become president of the Board therein created and entitled thereby to a salary as such president.

The Supreme Court of Alabama had a somewhat similar case before it. The facts were that a taxpayer sought to enjoin the State treasurer from paying certain warrants to members of the Budget Commission, for compensation allowed them by acts of the Legislature and compensation allowed to the Attorney General under an act relating to his office; the theory being that these Acts were unconstitutional and void and that, if the Budget Act is valid, the Compensation Act is violative of sections 118 and 281 of the Alabama Constitution, forbidding increase or decrease of the compensation of officers during the term for which they shall have been elected; is violative of section 280 forbidding any person to hold two offices of profit at one and the same time.

This Act created a state budget commission, composed of the Governor, as chairman, the Attorney General, and the state auditor. By amendment, the chief examiner of accounts was added to the commission.

In considering these questions, the Court said:

"The members of the budget commission are not holding

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two offices of profit within the meaning of section 280 of the Constitution. When, in the exigencies of government, it is necessary to create and define new duties, the legislative department has the discretion to determine whether additional offices shall be created, or these duties shall be attached to and become ex officio duties of existing offices. The power extends to the consolidation of offices resulting in abolishing one and attaching its powers and duties to the other. It matters not that the name commission or board is given to the body created. The officers named in the budget bill could be called the Governor's counsel or cabinet when engaged in the joint duties imposed upon them by virtue of their respective offices."

"It has now been long declared by this court that for new and additional duties an incumbent of a public office may be awarded extra compensation without a violation of sections 118 or 281 forbidding an increase of salary during the term. It may be said a rule of legislative policy has grown up by the sanction of this court's construction of these sections."

"We think there is no need to review the ground of these decisions. We may say that while a public officer takes his office cum onere, and is required to perform the duties from time to time prescribed by law, there is inherent justice in granting compensation for the increased labor and responsibility imposed by new legislation. The just legislator may be rather disposed to create a new office, than to impose unexpected new burdens on an existing officer without compensation. Nor do we think any sound objection obtains to conferring new duties, with compensation, upon the officer who, by reason of knowledge and experience, is best fitted to the new task. Fitness for the new duties growing out of experience in former official labors may furnish the opportunity to get efficient service at minimum expense to the state."

The Court then holds the act to be valid and cites many cases to substantiate its position including several cases from other states.

This Alabama case was a much weaker case than yours because of the constitutional provision in Alabama forbidding an increase in salary during the term which we do not have in our State Constitution. It seems to be such a well considered case that I am inclined to follow it particularly since there are no inhibitions in our Constitution or Statutes that would prevent you from accepting this salary.

I, therefore, am of the opinion for the foregoing reasons that it will be lawful for you to accept said salary.

BOARD OF HEALTH

November 22, 1937.

MODIFIED HEALTH UNIT—DUTY OF COUNTY COMMISSIONERS
AND STATE HEALTH OFFICER.

Dear Sir:

In reply to your letter of recent date regarding a modified county health department and asking whether or not the County Commissioners would have authority to name the personnel where there is less than a minimum number of personnel as is called for in the law that was passed by the 1931 Legislature, I wish to advise that this Act, being Chapter 14906, seems to contemplate what the County Commissioners should do so. Section 4 provides:

"That the personnel of the minimum full-time local health unit shall consist of a director, who shall be a doctor of medicine, a public health nurse, a sanitary officer and a clerk. * * * *They shall be employed by the Board of County Commissioners, provided, however that no such personnel shall be employed by the Board of County Commissioners unless such said personnel shall be approved by the State Health Officer.*" (Italic supplied)

You state that in the modified unit you only have a nurse, sanitary officer and clerk. I believe that the above quoted Section authorizes the employment of such other personnel as is needed to bring same up to a minimum full-time unit.

August 6, 1937.

PER DIEM OF MEMBERS OF BOARD.

Dear Sir:

I am in receipt of your letter of the 29th ultimo referring to that part of Section 3169, Compiled General Laws of Florida, 1927, pertaining to compensation of members of the State Board of Health, reading as follows:

"The State health officer shall receive a salary of four thousand five hundred dollars a year, to be paid quarterly, upon his requisition, approved by the president of the board of health, out of the fund hereinafter provided, together with his actual traveling expenses while engaged in the discharge of his duties as State health officer. The members of the State Board of Health shall receive a per diem of six dollars for each day of actual session, with a mileage to and from their homes to the place of meeting, by the nearest and most practicable route, at the rate of ten cents per mile."

You make inquiry if the per diem fixed by said statute should cover days of members going to and returning from the sessions of the Board.

In reply I beg to say the words "for each day of actual session" appear to limit the per diem to the day or days on which the actual sessions of the Board are held.

SECTION 5

CHIROPRACTIC EXAMINERS

September 14, 1937.

DUTIES UNDER CHAPTER 17764, ACTS 1937

Dear Sirs:

This is in reply to your letter of September 6th requesting my opinion concerning the effect of Chapter 17764, Acts of 1937, insofar as your official duties are concerned.

This act amends Sections 8, 11, 12 and 13 of Chapter 9330, Laws of Florida, Acts of 1923, the same being Sections 3442, 3445, 3446 and 3447 of the Compiled General Laws of Florida. When a section of a statute is amended that section as amended takes its place as a part of the original act with the same effect, after the amendment, as if it had been originally incorporated in the act. In view of this well established principle of statutory construction you would have no authority to delay the enforcement of the new requirements contained therein.

The renewal license fee of \$5.00 partakes of the nature of the fees described in Section 3443, Compiled General Laws of Florida, and are to be disposed of in accordance with the provisions of Sections 3451, 3452 and 3453, Compiled General Laws.

Section 4 of Chapter 17764 provides that all certificates to practice chiropractic in the State of Florida shall expire on the 30th day of September following the issuing thereof except that any holder may have the same renewed from year to year by the payment of an annual fee of \$5.00 to the Board. Unless the annual fee is paid the certificate expires under the provisions of this section. If a practitioner refuses to pay it he cannot legally obtain a State and County license in the manner set forth in Chapter 17764, Acts 1937. He would then be subject to prosecution for practicing without a license.

SECTION 6

CHIROPODY EXAMINERS

March 5, 1937.

CHIROPODISTS—TIME FOR PAYMENT OF FEE FOR
RENEWAL LICENSES*Dear Sir:*

This is in reply to your inquiry concerning the provisions of Sections 3 and 7 of Chapter 15911, Laws of Florida, Acts of 1933, insofar as the same relate to the time for paying the fee of \$5.00 for renewal of licenses issued under that statute.

Section 3 of the Act relates only to the issuance of original licenses and not to renewal licenses. Section 7 provides:

"A renewal license fee of \$5.00 shall be paid *annually* to the Secretary-Treasurer of the Board of Chiropractic Examiners and if not paid within three months, the license shall be revoked."

You will note that the statute does not define any license year and does not fix any date for the payment of the renewal license fee.

It is, therefore, my opinion that in each particular case the renewal fee is due one year after the issuance of the original license and that the Board has the power to revoke licenses when this fee is not paid within three months after that date, whatever that date may be.

SECTION 7

CITRUS COMMISSION

September 1, 1938.

AUTHORIZED TO PAY SALARY OF ADVERTISING MANAGER

Dear Sir:

In your letter of August 31st, you state you are in receipt of a salary requisition from the Florida Citrus Commission for an advertising manager in the amount of \$500.00 per month, which amounts to an annual salary of \$6000.00.

You call attention to Sub-section 3 of Section 8 of Chapter 16854, Acts of 1935, which provides for the employment by the Citrus Commission of a manager, giving to the Citrus Commission power to fix his compensation, provided that such manager shall not receive compensation greater than \$5000.00 per annum.

You also call attention to Sub-section 2 of Section 15 of Chapter 16854 (which should be 16857) which empowers the Citrus Commission to employ an advertising manager and to outline his powers and duties and fix his compensation.

You thereupon ask my opinion whether Sub-section 3 of Section 8 of Chapter 16854, Acts of 1935, sets the maximum amount that could be paid at \$5000.00. If, in fact, the salary requisition is for a manager employed by the Citrus Commission under the power conferred by sub-section 3 of Section 8 of Chapter 16854, his salary or compensation cannot be greater than \$5000.00 per annum. But if the salary requisition is for an advertising manager employed by the Citrus Commission under its power conferred by sub-section 2 of Section 15 of Chapter 16857, his compensation is that fixed by the Commission employing him, as the Statute does not in terms fix any limit but leaves it entirely to the discretion of the Citrus Commission under which he is employed.

March 22, 1938.

CITRUS FRUITS CONTAINERS—CHAPTER 16854, ACTS OF 1935 AS AMENDED BY CHAPTER 17775, ACTS OF 1937 CONTAINERS

Dear Sir:

You request my opinion concerning Section 1 of Regulation No. 17 of the Florida Citrus Commission as amended on March 15, 1938. The pertinent provisions of Section 1 of Regulation 17 are as follows:

"The containers adopted for citrus fruits shall be those containers of a maximum capacity of not over one and three-fifths (1-3/5) bushels, as specified in E. H. Delaney, I.C.C. 54, supplements thereto or successive issues thereof as set forth in Sup-

CITRUS COMMISSION

plement 36 of Tariff 232-A, * * * provided, however, that no container shall hold more of a given size of oranges, grapefruit or tangerines than will a Florida standard crate when commercially filled; and provided that no closed container which has been previously used for the sale, transportation or shipment of citrus fruit shall be used again for that purpose, except that the Florida Citrus Commission may by special written permit allow the re-use of closed containers on the conditions set forth in subsections 1, 2, 3, 4 and 5 of Section 1 of this Regulation."

You state that there is in use by many shippers and growers of this State a container commonly known as the "two bushel Bruce box" which when packed will contain more of a given size of oranges, grapefruit or tangerines than will a Florida standard crate when commercially filled. Your request my opinion as to:

1. Whether the above quoted provisions of Regulation No. 17 constitute a prohibition of the use in Florida of the two bushel Bruce box as a container for the packing, sale, transportation or shipment of Florida citrus fruit; and

2. Whether said provisions prohibit the use of such container hereinabove referred to only when said container "has been previously used for the sale, transportation or shipment of citrus fruit."

The authority of the Florida Citrus Commission to adopt standards for containers for the shipment of citrus fruit is derived from Section 10 of what is generally referred to as the Citrus Commission Law. Further provisions relating to containers designated as standard by regulations of the Florida Citrus Commission are contained in Section 12 of the same act. Said provisions of Section 12 read as follows:

"That all citrus fruit sold or offered for sale, or offered for shipment, or being shipped by common carrier or otherwise, shall be graded according to the standards as now fixed by the United States Department of Agriculture, or as such standards may be hereafter modified or changed, and all such citrus fruit shall have stamped thereon the grade thereof according to such standards, except that in case such citrus fruit is sold, offered for sale, or offered for shipment, or being shipped by common carrier, or otherwise, enclosed in a *container which meets the standards established by the commission*, it shall be sufficient if the grade of said citrus fruit shall be *stamped upon said closed container* in the way and manner prescribed by the Commission, provided that, under such order or regulation as the Commission shall prescribe, the shipper or seller using *closed containers* shall have the privilege of using, instead of marking, either labels,

CITRUS COMMISSION

brands or trade-marks which shall represent State grades or United States grades and be registered with the Commission and the Commission is hereby authorized to receive and file for record such labels, brands or *trade-marks*." (Italics ours.)

It appears from the provisions of Section 12 hereinabove set forth that the use of containers which meet the standards established by the Florida Citrus Commission is intended to be optional. There are certain privileges which may be enjoyed by persons using such standard containers, such as the right to merely stamp the grade of the fruit on the outside of such a standard container. It would appear that there are three methods for shipping fruit in compliance with the statute regulating the grading and marking of same. The first method is to have each individual fruit stamped under the provisions of Section 12. Shippers may in that event transport such fruit in bulk or in any type of containers which the shipper may elect to use. The second method is to use containers which meet the standards established by the Florida Citrus Commission without stamping the individual fruit. The third method is to use any type of closed container the shipper may desire which is properly labeled by having affixed thereto the brand name or trade-mark which has been duly registered with the Commissioner of Agriculture under the provisions of Section 12 of the statute.

It is my opinion, therefore, that Regulation No. 17 above referred to does not prohibit the use of the "two bushel Bruce box" as a container for the packing, sale, transportation or shipment of Florida citrus fruit. It is my further opinion that it does prohibit the use of such containers, as well as all other containers, which have been previously used, unless the conditions set forth in said Regulation No. 17 are complied with. Regulations must be construed in the light of the statute by virtue of which they are promulgated. The conclusions I have reached logically follow from the fact that the statute itself does not purport to prohibit or authorize the Florida Citrus Commission to prohibit the use of any particular container, but merely prescribes certain privileges in connection with the use of containers adopted as standard containers by the Florida Citrus Commission.

March 28, 1938.

CITRUS FRUIT CONTAINERS—CHAPTER 16854, ACTS OF 1935 AS
AMENDED BY CHAPTER 17775, ACTS OF 1937

Dear Sir:

This is with further reference to my opinion addressed to you under date of March 22, 1938 under the above caption.

I am modifying the aforesaid opinion by eliminating from page 3 thereof the following:

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"The third method is to use any type of closed container the shipper may desire which is properly labeled by having affixed thereto the brand name or trade-mark which has been duly registered with the Commissioner of Agriculture under the provisions of Section 12 of the statute."

In place of the provisions above eliminated I am substituting the following:

"The third method is predicated upon the following words contained in Section 12 of the statute:

"* * * provided that, under such order or regulation as the Commission shall prescribe, the shipper or seller using closed containers shall have the privilege of using, instead of marking, either labels, brands or trade-marks which shall represent State grades or United States grades and be registered with the Commission * * *"

The statutory provisions hereinabove last quoted may be construed in either of two ways, each within the letter of the act and each within the intent of the act which requires truthful marking and labeling of citrus fruit. The first construction would authorize the shipment of unstamped fruit in any type of closed container, so long as a properly registered label is placed thereon. The second construction would authorize the use of properly registered labels as substitutes for marking the grades, etc., on containers meeting the standards established by the Commission. Since the statute authorizes marking the grades, etc., on only standard containers, the labels, as substitutes, can be used only on standard containers. While this would not prohibit the shipment of fruit in any but standard containers it would not exempt the shippers of such fruit from stamping same individually. I am inclined to believe that you should adopt this latter construction."

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February 1, 1937.

COMMERCIAL FEEDING STUFF—APPLICATION OF
LAW TO DOG FOOD

Dear Sir:

This is in reply to your letter of January 20th in which you request my opinion as to whether or not "Keystone Dog Food," as shown by the guaranteed analysis tag, comes within the definition of "commercial feeding stuffs" contained in Section 3264, Compiled General Laws of Florida, 1927.

It is my opinion that any mixtures containing materials named in said Section 3264 are "commercial feeding stuffs." The fact that such mixtures are prepared as dog food would not render the statute inapplicable.

It is my opinion that all the laws relating to commercial feeding stuff would apply to mixtures intended for use as dog food if in fact such mixtures contain the ingredients specified in the statutory definition of "commercial feeding stuffs."

June 15, 1938.

COMMERCIAL FEEDING STUFFS—WET BREWERS' GRAIN AS
COMING WITHIN DEFINITION—SECTION 3264, C.G.L.

Dear Sir:

This is in reply to your letter concerning "Wet Brewers' Grain."

You state that in your capacity as Commissioner of Agriculture you have determined that a product known as "Wet Brewers' Grain" comes within the definition of "Commercial Feeding Stuffs" contained in Section 3264, Compiled General Laws of Florida, 1927. You state that this product is the residue from the manufacture of beer and is composed of the cereals used in the manufacture of beer. Florida brewers are selling this material in its wet form direct to dairymen who use it as a cattle feed.

Section 3264, Compiled General Laws of Florida, reads as follows:

"The term 'commercial feeding stuffs,' as used in this Chapter, shall be held to include linseed meals, cottonseed meals (when sold for stock feed), pea meals, cocoanut meals, gluten meals, maize feeds, starch feeds, sugar and molasses feeds, *dried brewers'*

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grains, malt sprouts, hominy feeds, cerealine feeds, oat feeds, corn and oat chops, corn and oat feeds, ground beef or fish scraps, mixed feeds, middlings, mixed feeds made wholly or in part from wheat, rye, buckwheat or rice, mixed bran, and brans made from any cereal or grain, but shall not include hays and straws, and cottonseed hulls, the whole seeds, nor the unmixed meals and chops, made directly from the seed of wheat, rye, barley, oats, velvet beans, Indian corn, buckwheat, broom corn or rice, containing less than ten per cent. of crude fibre. (Id. § 11.)" (Italics ours.)

I am of the opinion that your administrative determination that this product comes within the statutory definition above set forth is correct.

July 29, 1937.

COMMERICAL FEEDS—NAME OF MANUFACTURER REQUIRED
TO BE STATED ON TAG

Dear Sir:

This is in reply to your letter of July 23rd in which you request my opinion as to whether or not under the provisions of Section 3 of Chapter 5452 as amended by Chapter 5661, Acts of 1907 the name and address of the manufacturer of commercial feeding stuffs must be on the tag therein required.

Said Section 3 reads in part as follows:

"Every bag, barrel, or other package of commercial feeding stuff manufactured, sold in or imported into this State, shall have securely attached a tag or label, and plainly printed thereon, the number of net pounds of commercial feeding stuffs in the package; the name, brand, or trade-mark under which the commercial feeding stuff is sold; *the name and address of the manufacturer * * *.*" (Italics ours.)

Webster's Twentieth Century Dictionary defines the word manufacturer as follows:

"One who works raw materials into wares suitable for use."

The provision of the statute requiring the name and address of the manufacturer to be printed thereon is mandatory. The language of a statute is to be construed in the light of its commonly accepted usage. Therefore, the names of the persons or corporations who come within the definition of the word "manufacturer" as above set forth should be printed on the tags. This may inconvenience responsible dealers who have registered feeding stuffs under trade names and who are willing and able to be fully responsible for the quality of same. The words of the statute, however, are so plain that no other construction would be pos-

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sible. The administrative officers of the government must take the law as they find it and enforce it as written without regard for their views concerning its wisdom.

May 10, 1938.

EGGS—CHAPTER 16982, ACTS OF 1935—APPLICABILITY OF
STATUTE TO EGGS SOLD TO C.C.C. CAMPS

Dear Sir:

This is in reply to your letter of April 21st in which you state the following questions:

"1. Does it lie within the authority of the Commissioner of Agriculture, under the Florida Egg Law, to exercise the right of inspection on eggs which have been delivered to a Civilian Conservation Corps Camp operated under Federal Supervision in the State of Florida?

"2. If the right of inspection may not be exercised *within* the camp, may such right be exercised upon the eggs prior to their delivery to the camp?

"3. If the shipment of eggs of the Civilian Conservation Corps Camp originates in Florida, is the said shipment subject to the payment of the inspection fee of four cents a case imposed by the Florida Egg Law? If so, would eggs in transit found bearing no evidence of payment of inspection fee be subject to seizure by inspectors of this Department?

"4. May wholesalers of eggs holding certificates as dealers under the Florida Egg Law who have been supplying Civilian Conservation Corps Camps with eggs devoid of inspection fee labels be required to make settlement with the Department for the amount due the State for such labels?

"5. May the State Department of Agriculture enforce the provisions of the Egg Law either as to inspection of eggs or payment of the inspection fee upon shipments of eggs consigned to Civilian Conservation Corps Camps which originate at points outside the State of Florida and which, therefore, constitute interstate shipments either while such shipments were in transit or after coming to rest at point of destination?"

The answer to the first two questions depends upon whether or not jurisdiction of the property on which Civilian Conservation Corps Camps are located has been ceded to the United States Government. See the opinion of my predecessor, the late Cary D. Landis, under date of April 13, 1938. If jurisdiction has not been ceded inspectors would

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have the same right to enforce the statute on such property as they would on any other property in the State.

Under the provisions of Section 4126(11), Compiled General Laws, Supplement Edition, the inspectors have the right to stop and inspect any truck or other vehicle transporting eggs. Persons found to be violating the statute would be subject to the penalties prescribed therein. I do not find any provisions in the Act, however, authorizing the seizure of such eggs.

Your fourth question must be answered in the affirmative.

The fifth question is answered under the provisions of Section 4126(8), Compiled General Laws, Permanent Supplement. While the statute does not apply to interstate shipments it does apply at the very moment when the interstate shipment comes to rest within the State of Florida.

February 5, 1937.

**FERTILIZERS—NAME OF MANUFACTURER REQUIRED
TO BE STATED ON TAG**

Dear Sir:

This is in reply to your letter of February 2nd in which you request my opinion as to whether or not it constitutes a violation of the Fertilizer Law of Florida for a seller of commercial fertilizers to tag same with a tag indicating that the goods were manufactured by his firm when, in point of fact, the goods were actually manufactured for him by another firm.

Section 3809, Compiled General Laws of Florida, Supplement, provides that every package of commercial fertilizer manufactured, imported, transported, distributed, etc., shall have securely attached thereto a tag on which shall be plainly and legibly printed, among other things, "the name and address of the manufacturer." Under the provisions of Section 7937, Compiled General Laws, Supplement, a manufacturer who sells fertilizer without such a tag, "or if the tag fails to bear all of the information required by Section 3807" shall be guilty of a misdemeanor.

The term "manufacturer" is defined in Section 3816, Compiled General Laws of Florida, Supplement, as follows:

"(j) The word "manufacturer" means a person engaged in the business of importing, preparing, mixing, or manufacturing commercial fertilizer for sale, either direct to consumers or by or through other media of distribution, and the word "manufacture" means preparation, mixing, or manufacturing."

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In view of the statutory provisions hereinabove referred to, it is my opinion that it is a violation of law for a seller of commercial fertilizers to incorrectly state the name and address of the manufacturer of such fertilizers.

September 14, 1937.

FERTILIZERS—APPLICATION OF STATUTORY DEFINITION
OF "MANUFACTURER"

Dear Sir:

This is in reply to your recent letter in which you state the following:

"In the Tampa section we are informed that a number of mixers make a practice of accepting business from dealers under the following circumstances: The dealer having a brand of fertilizer or feed registered in his own name but not having equipment of his own for mixing, arranges with a mixer to use his equipment in compounding materials which are furnished by the dealer. In this case the owner of the equipment receives a fee for the use of his machinery but does not supply any of the materials entering into the compound."

The term "manufacturer" is defined in Section 3816, Compiled General Laws of Florida, Supplement, as follows:

"The word 'manufacturer' means a person engaged in the business of importing, preparing, mixing, or manufacturing commercial fertilizer *for sale*, either direct to consumers or by or through other media of distribution, and the word 'manufacture' means preparation, mixing, or manufacturing." (Italics ours.)

It is my opinion that under the circumstances stated by you the owner of the equipment who receives a fee for the use of the machinery and does not supply any of the materials entering into the compound is not a "manufacturer" within the statutory definition above set forth because he does not mix the fertilizer materials "*for sale*." He simply performs a service for which he is compensated by the dealer, who would be in reality the "manufacturer" under the statute. Only the name of the latter would be required to be stated on the tag as the "manufacturer."

January 26, 1938.

FERTILIZERS—COMMERICAL FEEDING STUFFS—COLLECTION OF
INSPECTION FEE ON SHIPMENTS IN INTERSTATE COMMERCE

Dear Sir:

This is in reply to your letter of January 18th in which you request my opinion as to whether or not the statutory inspection fee of twenty-

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five cents a ton may be collected upon fertilizers or commercial feeding stuffs purchased outside of the State of Florida and shipped directly to the purchaser and used exclusively by him for his own purposes.

I call your attention to Sections 3259 and 3811, Compiled General Laws of Florida, 1927. The inspection fee required to be paid for both commercial feeding stuffs and fertilizers is based upon the amount "offered for sale" in this State. It is therefore my opinion that the direct importation of commercial feeding stuffs or fertilizers for the personal use of the consignee is not subject to provisions of the statutes above referred to requiring payment of inspection fees. In this connection I call your attention to an opinion of the Attorney General under date of October 28, 1931 which is reported at pages 340-341 of the Biennial Report of the Attorney General for the years 1931-32.

January 26, 1938.

GASOLINE—INSPECTION PROCEDURE IN DRAWING SAMPLES

Dear Sir:

This is in reply to your letter of January 18th. You state that gasoline inspectors take samples for analysis from large storage tanks situated at the various ports, some of which tanks hold several million gallons of gasoline and vary in height from thirty to sixty feet. You state further that the climb to the top of the tank for the purpose of obtaining the samples is by means of a perpendicular ladder which is particularly hazardous to some of the inspectors who are past middle age. You further state that several oil companies have offered to designate one of their employees to perform the service of drawing samples under the direction and supervision of the inspector and you request my opinion as to whether or not this practice would be legal.

It is my opinion that obtaining samples in the manner outlined under the direction and supervision of a gasoline inspector, under circumstances such as would guarantee securing fair samples, would be legal. The fundamental intent of the law is to obtain a fair sample for analysis and samples obtained under the direction and supervision of inspectors would be essentially the same as samples taken physically by the inspectors themselves.

February 7, 1938.

**GASOLINE—YOUR AUTHORITY TO PROMULGATE CERTAIN RULES
AND REGULATIONS DEFINING STANDARDS AND REQUIRING
GASOLINE DEALERS TO POST CONSPICUOUSLY A SIGN
SHOWING THE SPECIFIC GRADE SOLD**

Dear Sir:

In accordance with your request for my opinion as to your power,

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under the provisions of Chapter 7905, Laws of Florida, 1919, as amended by Chapter 10134, Laws of Florida, 1925, to promulgate certain regulations fixing the standards of gasoline sold in this State at three different grades, and requiring the retailers of said gasoline to post conspicuously on each pump a placard showing the grade of gasoline, according to your regulations, which is dispensed in that pump, I would state that the title to the Act in question is as follows:

"AN ACT Relating to the Inspection, Measurement, Analysis and Fixing the Standards of Certain Oils and Gases sold in this State; to Authorize the Collection of an Inspection Fee and Disposition thereof; to Provide for the Appointment of an Assistant State Chemist, Oil Inspectors, Clerical Help and Prescribe Their Duties; and to Define the Powers and Duties of State Attorneys and other Prosecuting Attorneys and the Commissioner of Agriculture in Connection Herewith."

You will note that the title states that the Act relates to the inspection, measurement, analysis and fixing and standards of certain oils and gases sold in this State, and also relates to the definition of the powers and duties of the State Attorneys and other prosecuting attorneys and the Commissioner of Agriculture in connection therewith.

Under Section 1 of the Act all dealers in gasoline and oils in this State are required to furnish an affidavit containing the name, brand and trademark of the oils which they desire to sell, together with the name and address of the manufacturer thereof, and that such oil or oils are in conformity with the standards described by you.

The second Section of the Act provides a method of securing samples of gasoline and oil for the purpose of testing to see that it does comply with the standards prescribed by you. The third, fourth and fifth Sections of the Act relate to the appointment and employment of Assistant Chemists and Clerks. Section 6 of the Act provides that if any of the oils sold in this State fall below the standards fixed by you, such oils shall be subject to confiscation and sale by your order. This Section also requires each dealer in gasoline to post conspicuously at the place of delivery a placard showing the specific degree of gravity of the product offered or exposed for sale.

Section 14 of the Act is as follows:

"That the Commissioner of Agriculture shall promulgate such rules and regulations not inconsistent with the provisions hereof as in his judgment may be necessary to the proper enforcement of this Act; and to define and fix the standards and specifications for all the oils and gases referred to in Section 1 hereof; such standards and specifications to be fixed before any of such oils and gases shall be sold or otherwise dispensed in this State."

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The remainder of the Act and the amendment thereto are immaterial for the purpose of this opinion. You will, therefore, see that under this Act you have the authority to prescribe and fix the standards of oils and gases which are sold in this State. This standard is left solely to your discretion. You are also given authority to promulgate such rules and regulations not inconsistent with the provisions of said Act, as in your judgment may be necessary to the proper enforcement of the Act, and to define and fix the standards and specifications for all oils and gases sold in this State.

It appears to me that the purpose of this Act was two-fold:

First: To prevent the sale of oils and gases which might be more dangerous to the public than those which do conform to the standards and specifications promulgated by you.

Second: To prevent the sale of inferior gases and oils to the public of this State, and thus prevent the public from being defrauded, or paying for something which they are not receiving.

I understand from you, and I have observed in my travels over the State, that we do not have a definite standard of gasoline in this State. That some dealers advertise high test gasoline at cut rate prices, when in truth and in fact the gasoline which they are selling as high test, is of inferior grades, and therefore, the public being misled by false signs is being defrauded in the purchase of such gasoline. It is further my understanding that you desire to remedy this situation by fixing three grades of gasoline, to be known as Premium, Regular and Third Grade. That the specification to be prescribed for the grade to be known as Premium shall be the same as those now found in the genuine, high test Ethyl and other anti-knock gasolines. That the specification for the grade of gasoline to be known as Regular, is the same as that now found in the regular standard grade of gasoline, and that all gasoline below these two standards shall be known as third grade gasoline; and that in order to guarantee the public that they are receiving the grade of gasoline for which they are paying, you will require each retailer of gasoline to post conspicuously on each pump a placard showing what grade of gas is being dispensed from each particular pump. (It is my understanding that the Department of Agriculture will furnish these placards to the gasoline dealers).

Upon examination of a digest of the State Inspection Laws relating to petroleum products of all the states of this country, I find that such regulations have already been adopted in eight states. In some of these states these regulations were enacted by statute, and some by rules promulgated by the proper officials of the different states.

I understand that your authority to promulgate such rules and regulations under the above mentioned sections of law has been questioned

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on the ground that the Legislature has not delegated you this power, and if it had, it would be an unlawful delegation of such power. It is to this question that this opinion relates.

The sale and possession of gasoline is a subject vitally affected by the public interest and welfare. In this connection see: *Sheip Company et al. vs. Amos*, reported in 100 Fla. 863, and on page 878 where our Court said:

"There is no inherent right to use dangerous property without restraint. The noxious and highly inflammable character of gasoline, particularly when stored in large quantities, is common knowledge. The State has the power to regulate that species of use of it as well as the sale of it by the imposition of an excise, either in the exercise of the police power, the taxing power, or both."

It is my understanding that the quality of gasoline is constantly being improved by the oil companies, and in order to insure the people of the State of Florida the highest quality of gasoline, it is necessary for you to be constantly changing your regulations defining the standards thereof in order to keep up with the improvements. This, perhaps, was the reason the Legislature, in delegating you the power to fix the standards of oils and gases, left it entirely to your discretion. It is true that the Legislature may not delegate its power to make a law to any particular person, group of persons, or Board, but as this Court in the case of *Johnson vs. Maxcy*, reported in 99 Fla. page 1311 said:

"The Legislature may not delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law's action depends."

You will recall this is the case attacking the Citrus Inspection law of 1925, in which you were granted the power to make rules and regulations necessary to the proper enforcement of the Act. This view is further substantiated by the case of *Taylor vs. Roberts*, reported in 94 So. page 874, where our Court held that the charter provisions of the City Council of Jacksonville to control vehicles extended to automobiles not known when the charter was granted; and that an ordinance delegating certain authority to the Chief of Police in controlling automobiles was not invalid as an unlawful delegation of authority.

The Supreme Court of the United States in the case of *United States of America vs. Shreveport Grain and Elevator Company*, reported in 77 Law Ed. page 175, on the question involving the Pure Food and Drug Act, on page 179 said:

"The contention that the act contravenes the provisions of the Constitution with respect to the separation of the govern-

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mental powers is without merit. That the legislative power of Congress cannot be delegated is, of course, clear. But Congress may declare its will, and after fixing a primary standard, devolve upon administrative officers the "power to fill up the details" by prescribing administrative rules and regulations. That the authority conferred by the Act now under review in this respect does not transcend the power of Congress is not open to reasonable dispute. The effect of the provision assailed is to define an offense, but with directions to those charged with the administration of the act to make supplementary rules and regulations allowing reasonable variations, tolerances and exemptions, which because of their variety and need of detailed statement, it was impracticable for Congress to prescribe. The effect of the proviso is evident and legitimate, namely, to prevent the embarrassment and hardship which might result from a too literal and minute enforcement of the act, without at the same time offending against its purposes. The proviso does not delegate legislative power, but confers administrative functions entirely valid within principles established by numerous decisions of this court, of which the following may be cited as examples. *Buttfield vs. Stranahan*, 192 U. S. 470, 496, 48 L. Ed. 525, 535, 24 S. Ct. 349; *Plymouth Coal Co. vs. Pennsylvania*, 232 U. S. 531, 542, 58, L. Ed. 713, 718, 34 S. Ct. 359; *United States vs. Grimaud*, 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480, and authorities reviewed."

As has heretofore been pointed out, the Legislature delegated to you the administrative duties of determining and fixing the standards and specifications of gasoline and oil sold in this State, for the reason that the quality thereof is constantly being improved, and that it would not, because of the very nature of the subject, lay down any definite specifications in a law. The subject of delegation of duties by the Legislature in this particular field has been discussed in numerous cases, and has been upheld by numerous Courts. The general rule on this question is stated in 12 A.L.R. page 1447; 54 A.L.R. page 1110, and 92 A.L.R. page 410 as follows:

"As an exception or qualification to the rule stated, it has been held that it is not always necessary that statutes and ordinances prescribe a special rule of action, but, on the other hand, some situations require the vesting of some discretion in public officials, as, for instance, where it is difficult or impracticable to lay down a definite comprehensive rule, or the discretion relates to the administration of a police regulation and is necessary to protect the public morals, health, safety, and general welfare. It may be noted that the modern tendency is to be more liberal in permitting grants of discretion to administrative bodies or officers in order to facilitate the administration of

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laws as to the complexity of economic and governmental conditions increases."

In my opinion, the above statement of the law is applicable to the question which you asked me, and this statement of the law is amply supported by numerous authorities set out in the annotations above cited.

The oil companies have acquiesced in your setting, changing and defining the standards of gasoline since 1919; and even if there might be a question as to your right to do this, their acquiescence over so long a period of time would mitigate against them. It appears to me that if you had the authority to change, define and fix the standards of gasoline in one instance that you would have it in the present instance. Therefore, since the statute is clearly not unconstitutional, and since it has not been so declared by any Court of competent jurisdiction, it is my opinion, that you do have the authority, under the 1919 and 1925 Acts of the Legislature to promulgate and enforce the rules and regulations hereinabove mentioned, as these rules and regulations do not appear to be unreasonable, and do not appear to be without the scope of authority granted you in the above Acts.

July 6, 1938.

**GENERAL INSPECTION FUND—APPROPRIATIONS UNDER
SECTION 20 OF CHAPTER 14762, ACTS OF 1931**

Dear Sirs:

Honorable Nathan Mayo as Commissioner of Agriculture, has requested my opinion concerning the payment of salaries in the administration of the Milk and Milk Products Law, Chapter 14762, Laws of Florida, Acts of 1931. Honorable J. M. Lee, Comptroller of the State of Florida, has concurred in this request.

Under the general appropriation acts passed by the Legislature at the sessions of 1931, 1933 and 1935, specific appropriations were made from the general inspection fund for the administration of Chapter 14762. The Legislature of 1935 appropriated \$13,000.00 from the general inspection fund for salaries. The Legislature of 1937, however, omitted any such specific appropriation.

Due to the increase in the duties devolving upon the Commissioner of Agriculture under the Statute here considered, it was necessary to employ an additional inspector for part of the last fiscal year. The salary of this additional inspector increases the total amount to be paid out for salaries for the fiscal year ending June 30th, 1938, to \$13,745.00. The question has been raised concerning the right to expend more than the amount of \$13,000.00 for salaries during the last fiscal year. The determination of this question will depend upon the existence of a statute appropriating such funds.

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The general appropriation act of 1935, Chapter 16772, Acts of 1935, has no bearing on the problem presented for the appropriations made therein expired on June 30th, 1937. There is, however, a continuing appropriation made in Section 20 of Chapter 14762, Acts of 1931. Section 20 reads as follows:

"Section 20. The Commissioner of Agriculture is hereby authorized and directed to enforce the provisions of this Act and is authorized to employ field and other agents and clerical assistance at such times and for such periods as may be necessary to enable him to enforce the provisions of this Act and to incur and pay any of the expenses thereof out of the General Inspection Fund created by Chapter 10149, Laws of Florida, Acts of 1925, on vouchers approved by the Supervising Inspector and Commissioner of Agriculture, including traveling expenses, and the same are hereby appropriated for that purpose out of said General Inspection Fund."

It is my opinion that the provisions of Section 20 above set forth are sufficient to authorize the payment of salaries in the amount of \$13,745.00 for the fiscal year ending June 30th, 1938. The payment of the compensation of field and other agents and clerical assistance is properly an expense for which appropriation is made in said Section 20 of the Statute. The only limitation on such expenditure is that it is "necessary to enable" the Commissioner of Agriculture to enforce the provisions of the Statute. When vouchers have been approved by the supervising inspector and the Commissioner of Agriculture as provided in the Statute, the presumption must be that the expenditures are "necessary."

May 7, 1938.

**PURE FOODS—ARTIFICIAL COLORING OF BREAD—SECTIONS 3203
AND 3204, COMPILED GENERAL LAWS, 1927**

Dear Sir:

This is in reply to your letter of May 4th in which you state the following:

"A Number of bakeries within the state have been marketing what is believed to be an ordinary ten cent loaf of bread to which artificial coloring matter has been added to give it a yellowish appearance. It is our contention that this yellow cast is employed to leave the impression that the loaf is rich in eggs and butter although in point of fact laboratory examination does not reveal the presence of either eggs or butter in the bread. The State Chemist has held such product to be misbranded because it was deceptive and misleading in appearance and conveyed an

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erroneous impression upon the buying public. Please inform us whether, under the terms of the Pure Food Law, the Commissioner of Agriculture may prohibit the further use of artificial coloring in bread sold in the State of Florida."

Consideration of Section 3204, Compiled General Laws of Florida, 1927, in which the term "misbranded" is defined discloses that it relates entirely to the matter of labeling food products. Section 3203, Compiled General Laws of Florida, 1927, relates to adulteration of foods. It contains the following provision:

"Fourth—If it be mixed, colored or powdered, coated or stained in a manner whereby damage or inferiority is concealed."

It is my opinion that Section 3203 rather than Section 3204 would apply to the coloring of bread in such a manner as to indicate that it is rich in eggs and butter. In my opinion the use of coloring matter to give a food product the appearance of being better than it actually is is an indirect method of concealing inferiority.

There is a provision contained in Section 3204, Compiled General Laws of Florida, 1927, however, which has a bearing on the determination of this question. This provision is as follows:

"Provided, that nothing in this Chapter shall be construed as excluding harmless coloring or flavoring ingredients used for the purpose of coloring or flavoring *only*;" (*Italics ours.*)

If the bakeries are actually using the coloring matter for the purpose of coloring *only* then under the statute they would have a right to do so. Colored breads are often used in making sandwiches to be served at bridge parties and luncheons. The use of such colored breads is for decorative purposes and could not possibly deceive anyone as to the merits of the bread. Such coloring of breads would not be a violation of the Pure Food Laws.

In this particular instance, however, the color coincides with that which the average consumer may reasonably conclude is derived from the presence of butter and eggs. In the absence of a label on the wrapper clearly disclosing that the color in question is derived from the use of harmless, artificial coloring your conclusion that the product is an adulterated one would be reasonable. If, on the other hand, the bakeries were to make such a disclosure on the label their contention that the coloring matter is added for the purpose of coloring *only* would very likely be sustained.

My conclusions may be summarized by stating that you may prohibit the sale of this bread unless it is clearly disclosed on the wrapper that the particular golden color is derived from the use of harmless, artificial coloring matter.

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December 21, 1938.

PURE FOOD AND DRUGS—DOES FLORIDA STATUTE (SECTION 3211 C.G.L.) ADOPT DEFINITIONS AND STANDARDS SET FORTH IN NEW FEDERAL FOOD, DRUG AND COSMETIC ACT OF 1938?*Dear Sirs:*

At the last session of Congress, an act was passed which is known as "The Federal Food, Drug and Cosmetic Act," which in Section 902 thereof repeals the Federal Food and Drugs Act of June 30, 1906, as amended, said repeal to take effect twelve months after the date of the enactment of the new statute.

The Florida Food and Drugs Act, Chapter 5662, Acts of 1907, as amended by Chapter 6122, Acts of 1911, as further amended by Chapter 65401, Acts of 1913, and as set forth in Sections 3200 to 3211, inclusive, Compiled General Laws, 1927, is practically a counterpart of the Federal Food and Drugs Act of June 30, 1906. The essential difference between the State and Federal legislation is that the State statute applies to intrastate transactions while the Federal act applies to interstate transactions.

Section 3211, Compiled General Laws of Florida, 1927, reads as follows:

"The definitions and standards of foods and drugs prescribed by the Act of Congress approved June 30th, 1906, entitled 'An Act for Preventing the Manufacture, Sale or Transportation of Adulterated or Misbranded or Poisonous or Deleterious Foods, Drugs, Medicines or Liquors, and for Regulating Traffic Therein, and for Other Purposes,' and amendments thereto, are hereby adopted and declared to be the definitions and standards of foods under the terms and meaning of this Chapter, and that no article of food shall be deemed to be adulterated under the terms of this Chapter other than those defined and found to be adulterated, poisonous, deleterious or detrimental to health under the provisions of the Food and Drugs Act of Congress approved June thirtieth, nineteen hundred and six, and amendments thereto. The Commissioner of Agriculture, with the advice of the State Chemist, shall establish such rules and regulations as shall not be inconsistent with the provisions of this Chapter; in conformity with the rules and regulations formulated by the United States Department of Agriculture, by authority of the National Food and Drugs Act of June thirtieth, nineteen hundred and six, and amendments thereto. (Ch. 5662, Acts 1907, § 13; Ch. 6122, Acts 1911, § 15; Ch. 6541, Acts 1913, § 15.)"

COMMISSIONER OF AGRICULTURE INSPECTION DIVISION

You request my opinion as to whether or not the provisions of Section 3211, Compiled General Laws, above set forth, are sufficiently comprehensive to adopt the definitions and standards prescribed by the Federal Food, Drug and Cosmetic Act of 1938 to which reference is hereinabove made.

It is my opinion that Section 3211, Compiled General Laws, must be construed as including only the definitions and standards prescribed by the Act of Congress approved June 30, 1906. This conclusion is inevitable in the light of the fact that Section 3211, Compiled General Laws refers specifically to that Federal Act and is not sufficiently broad to include any other Federal enactments on the subject of Pure Food and Drugs which are not amendments to the Federal Act of 1906. The Federal Food, Drug and Cosmetic Act of 1938 is not an amendment of the Act of 1906 as is evidenced by the fact that it specifically repeals the earlier Federal act.

SECTION 9
CONSERVATION DEPARTMENT

July 23, 1937.

MULLET—TAKING AND TRANSPORTING UNDER CHAPTER 17934,
AND 17933, OF 1937.

Dear Sir:

I am in receipt of your letter of the 28th ult., enclosing copy of Chapter 17934, together with Chapter 17933, of 1937, each of which Acts relates to the taking of mullet in certain respective counties on the Gulf coast. You make inquiry if mullet caught in these special counties under said bills may be transported through other counties during the general closed season on mullet. In this connection you also refer to Chapter 17914, of 1937, which provides that anyone transporting fish is required to have a permit from your department before transporting the same.

Your attention is called to Section 4 in each of the first above two mentioned Acts, which provides that it shall be lawful to take, possess, sell, exchange or *transport* mullet caught in any of the counties mentioned at any time. You will note also that Section 6 in each of said Acts repeals all laws in conflict therewith. In such situation it appears that mullet caught in the counties mentioned in said Laws may be transported through other counties during the closed season in such counties, provided the shippers have a permit for such shipment under the provisions of said Chapter 17914.

April 22, 1937.

MULLET—SPECIAL PERMISSION TO CATCH DURING CLOSED
SEASON NOT AUTHORIZED.

Dear Sir:

This is in reply to your letter of April 21 requesting my opinion as to whether or not your Department has authority to grant a permit to catch mullet during the closed season for the purpose of feeding large marine specimens in captivity.

Section 8060, Compiled General Laws of Florida, 1927, prescribes the closed season for mullet. I find no statutory provisions which would authorize the granting of such a permit. In my opinion it would require additional legislation to accomplish this purpose.

December 30, 1937.

MULLET—CONSTRUCTION OF LAW RE-POSSESSION AND SALE

Dear Sir:

I am in receipt of your letter of the 29th instant, referring to Chap-

CONSERVATION DEPARTMENT

ters 17933 and 17934, Laws of Florida, Acts of 1927, which permit the taking of mullet in certain gulf coast counties at any time. You also refer to Section 1861, Compiled General Laws of Florida, 1927, which provides that it shall be unlawful for any person, persons, firm or corporation to take, have in his or their possession, buy, sell, offer for sale or ship any fresh or freshly salted mullet or mullet roe in this State between the first day of December of any year and the twentieth day of January of the next succeeding year.

You make inquiry if mullet may be possessed and sold in counties of the State not covered by said Chapters 17933 and 17934.

You will note that the title of Chapter 17933, as well as Chapter 17934, relates only to the taking of mullet. Section 4 of Chapter 17933, reads as follows:

"It shall be lawful to take, possess, sell, exchange or transport mullet caught in any of the counties of the State of Florida bordering on the Gulf of Mexico and lying west of the Aucilla River, at any time, provided such mullet so taken, possessed, sold, exchanged or transported shall not be less than eight (8) inches from the tip of nose to tip of tail."

Section 4 of Chapter 17934 is similar to Section 4 of Chapter 17933 above quoted.

When Section 4 of each of said Acts is read in connection with the titles of said Acts it appears that the provisions of said Acts cannot apply to counties other than those gulf coast counties within the special provisions of said Acts.

I, therefore, advise in my opinion mullet may not be lawfully possessed and sold contrary to the provisions of Section 1861, Compiled General Laws of Florida, 1927, in any county of the State other than such counties as may be covered by Special Acts.

January 7, 1938.

MULLET—LEGAL LENGTH, SECTION 1860 C.G.L.

Dear Sir:

I have your letter of the 18th ultimo making inquiry with reference to the legal length of mullet that may be taken in the State of Florida.

Chapter 17,933, Laws of Florida, Acts of 1937, appears to be the last general law on the subject of taking mullet in counties of the State west of Aucilla River. Section 2 of said Act makes it lawful to take mullet of any size in said counties between the first day of December of any year and the twentieth day of January of the next succeeding year. Sec-

CONSERVATION DEPARTMENT

tion 4 of said Act makes it lawful to take at any time mullet not less than 8 inches from tip of nose to tip of tail.

Except as to counties controlled by some statute of local or special application, Section 1860, Compiled General Laws of Florida, 1927, appears to be the general law controlling the taking of mullet in all counties other than those counties west of the Aucilla River. You will note that said Section makes it unlawful to take mullet less than 12 inches from tip of nose to fork of tail with the proviso that silver mullet of a less length than 12 inches may be taken during the open season.

OYSTERS AND CLAMS

February 26, 1937.

ARREST FOR TAKING AND SELLING ON CONDEMNED AREA

Dear Sir:

I am in receipt of your letter of the 25th instant making inquiry if Conservation Agents have authority to make arrests when they find parties gathering oysters to eat from polluted areas.

In reply your attention is called to Section 1810, Compiled General Laws of Florida, 1927, formerly Section 1252, Revised General Statutes of 1920, which gives the Shell Fish Commissioner and his deputies power to make arrests for violation of the provisions of the shell fish law. I find no provision in the shell fish law pertaining to the subject of your inquiry.

You also enclose copy of letter from * * * to * * * Conservation Agent, St. Augustine, and request my attention thereto. The body of said letter reads as follows:

"Would you please advise us if there is any law against gathering oysters any place in the Halifax River if they are not sold from a restricted area, as we explained to you when you were here about a couple of tongs being caught by Deputy Sheriff Clifton on condemned ground.

"We do not handle or sell these oysters, but to get our man out of jail we had to post \$100.00 bond, as we can't find where he has broken any law.

"If we can get your approval of this we can get our money back and stop that mess in the Court."

You will note from the above that the arrest was made by a Deputy Sheriff and it does not appear that your Department was connected with the case. In such situation, I do not think your Department would be authorized to interfere in the said Court proceeding.

CONSERVATION DEPARTMENT

February 26, 1937.

OYSTERS—WHEN DISPOSITION OF SHELLS NOT WITHIN
PURVIEW OF DEPARTMENT*Dear Sir:*

I am in receipt of your letter of the 23rd instant enclosing copies of letters from * * * President East Gadsden Bank, Gadsden, Alabama, with reference to returning oyster shell to oyster beds. * * * complains that * * * and others of Crystal River are doing quite a bit of filling in on the water front with oyster shells; that they are injuring the water front of his property consisting of 137½ feet of front; that it seems to him that no person or individual should be permitted to gather oysters and not plant the shells back.

Answering your inquiry I refer you to Section 1807, Compiled General Laws of Florida, 1927, originally Section 1249, Revised General Statutes of 1920. The said Section provides for oysters and clams taken from natural reefs to be culled upon the natural reefs as taken. It further provides that all oysters which measure less than 3 inches from hinge to mouth and all bedding shell shall be immediately replaced and scattered broadcast upon the natural reefs from which taken. It further provides in determining what oysters shall be removed from marketing oysters, no oyster under 3 inches from hinge to mouth shall be included in the percentage of oysters under size provided they adhere to the marketable oysters so closely that to remove the same would destroy either the oyster under size or the marketable oyster.

It is my understanding that the party mentioned by * * * and other associates are in the oyster business. If they are taking oysters legally and not violating the provisions of the shell fish law, particularly Section 1807, above mentioned, any deposit of shell by them in the vicinity of the water front of Mr. * * * would not be a matter within the purview of your department. Any injury to the water front of Mr. * * * by the deposit of shell within his vicinity would be purely a personal matter and as suggested by the Commissioner of Agriculture, in his letter to Mr. * * * of the 10th instant, it would be well for him to contact a competent attorney in that territory to advise him in the premises and to protect any interest that he may have.

June 19, 1937.

OYSTERS—WHEN TAKING AND TRANSPORTING BEYOND COUNTY
DURING CLOSED SEASON AUTHORIZED.*Dear Sir:*

I am in receipt of your letter of the 16th instant, the body of which reads as follows:

"Please advise me if parties can legally market fresh oysters

CONSERVATION DEPARTMENT

from their leased bottoms in Franklin County and transport them outside of Franklin County, during the closed season."

In reply your attention is called to Section 1794 (1236), Compiled General Laws of Florida, 1927, which contains the following language: "No railroad, steamboat or other common carrier shall knowingly transport any raw oysters or clams during the closed season * * * and it shall be unlawful for any common carrier to transport any raw oysters between the fifteenth day of April and the first day of October of each year."

Your attention is further called to Section 8079 (5839), Compiled General Laws of Florida, 1927, containing the following language:

"It shall not be lawful for any person, firm or corporation to take, gather or catch oysters on the natural reefs of this State, or to have such oysters in their possession for sale between the fifteenth day of April and the first day of October of each year; *except from private leased or granted grounds, or artificial beds of riparian owners as herein described, and except as herein further provided; * * **"

In addition to the above general laws I note in your pamphlet of laws pertaining to your Department a list of Special Acts pertaining to Franklin County, as follows: Chapter 16,429, Acts of 1933; Chapter 16,431, Acts of 1933; and Chapter 12,750, Acts of 1927. It appears that House Bill No. 767 of 1937, in Section 3, repeals said Chapter 16,431, Acts of 1933, and Chapter 12,750, Acts of 1927. The only remaining local Act pertaining to Franklin County, listed by you, is said Chapter 16,429 of 1933, which I assume is the only local Act pertaining to said County other than said House Bill No. 767 of 1937.

Chapter 16,429 of 1933, contains the following language in Section 1:

"That from and after the passage of this Act it shall be lawful to tong, take and gather oysters of the size now permitted by law from the natural and artificial or planted beds, bars and reefs in Franklin County, Florida, during the month of September in each and every year and to possess, transport and sell such oysters in the State of Florida. * * *

From the foregoing general laws it appears that the closed season on oysters is from the fifteenth day of April until the first day of October of each year; that common carriers are prohibited from transporting raw oysters during said closed season; that it is unlawful to take or have oysters in possession for sale during such closed season, except from private leased or granted grounds or artificial beds of riparian owners. This exception would appear to permit oysters to be taken and possessed for sale from private leased grounds during the closed season but common carriers would still be prohibited from transporting same. This rule,

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under the general law, must also be considered in connection with the provisions of the Special Act, Chapter 16,429 of 1933, above quoted, under which provision it would appear that in Franklin County oysters may be taken, possessed and transported in the State of Florida during the month of September of each year.

July 22, 1937.

CLAMS—NO STATUTE PROVIDING FOR CLOSED SEASON

Dear Sir:

Answering your letter of the 28th ultimo making inquiry with reference to closed season for the taking of clams, I beg to advise that I have made a search of the statutes that might relate to the subject of your inquiry, and I find no statute providing for a closed season for taking clams in the salt waters of the State.

Under Section 1939, Compiled General Laws of Florida 1927, there is a provision making it unlawful to remove from the fresh waters of the State any mussels, shell fish, or clams, or other substances upon which fresh water fish feed, except for bait.

December 3, 1937.

CLAMS—COMMISSIONER OF AGRICULTURE AUTHORIZED TO PREVENT TAKING, SECTIONS 1791 AND 1808 C.G.L.

Dear Sir:

I am in receipt of your letter of the 2nd instant making inquiry if a company should give bond to indemnify the Department for any damage from dredging operations and also making inquiry if you have the right to stop dredging for clams and require operators to use tongs only for taking same.

In reply I beg to say I do not find any statutes authorizing you to stop dredging for clams or to require indemnity bond for any damage from dredging operations.

Your attention, however, is called to Section 1791, Compiled General Laws of Florida, 1927, which provides that the Commissioner of Agriculture is authorized to suspend, close or prevent the taking of oysters or clams for a period at any one time not exceeding two years from any natural or artificial reefs or beds, or from any bed planted by the State or any County.

April 8, 1938.

OYSTERS—REHABILITATION AUTHORIZED BY SECTION 1811 C.G.L.

Dear Sir:

I am in receipt of your letter of the 7th instant, the body of which reads as follows:

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"The Conservation Department and the Federal Government will agree with the Board of County Commissioners of Levy County to plant oysters in the vicinity of Cedar Keys of Levy County, Florida, if the Board of County Commissioners will agree to pay a certain sum of money to assist in the expenses of the project.

"The Board of County Commissioners at the present time has no item of the fund in their Budget whereby such an expenditure could be made. The Conservation Commissioner has stated that if the Board will pass a resolution agreeing to put in their Budget for the next fiscal year an amount of \$300.00 per month for the first six months and \$150.00 a month for the next six months that the Commissioner and the Federal Government would immediately start the planting of the oysters in their county.

"Section 7465, Compiled General Laws of 1927 seems to prohibit the Board of County Commissioners voting to pay illegal claims or excess indebtedness.

"Please give me your opinion as to whether or not the Board of County Commissioners would have authority to pass a resolution at this time stating that they would put in their Budget for the next fiscal year the amount of money as above stated to assist the State Conservation Department and the Federal Government in paying for this project."

Your attention is called to Section 1811, Compiled General Laws of Florida, 1927, relating to the shell fish industry and containing the following language:

" * * * The Board of County Commissioners of the several counties of this State, in order to accomplish the purposes of this Article, are hereby authorized and permitted to appropriate and expend such sum or sums as they may deem proper for the purpose of planting or transplanting oyster shell or cultch, out of any sum in the county treasury not otherwise appropriated."

In view of the above, it appears that the Board of County Commissioners would be authorized to pass a resolution stating that they would put in their budget for the next fiscal year the amount of money stated to assist the State Conservation Department and the Federal Government in paying for the proposed project for planting oysters in the vicinity of Cedar Keys in Levy County.

April 19, 1938.

OYSTER LEASES—LEGAL PROCEDURE TO COLLECT
PRIVILEGE TAX

Dear Sir:

I am in receipt of your letter of the 14th instant advising that a party

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holding certain oyster leases in Nassau County is refusing to pay the privilege tax required under the statute and you make inquiry how you should proceed legally against this party.

Section 1810, Compiled General Laws of Florida, 1927, provides for the arrest of parties violating the provisions of the shell fish statutes.

Sections 1795, 1822 and 1824 provide for privilege taxes.

Section 8081 provides a penalty of a fine of \$100.00 or imprisonment of not more than six months, or both, in the discretion of the Court for any person found guilty of wilfully violating any of the provisions of the shell fish statutes.

The foregoing statutes clearly provide for criminal proceedings in such cases.

August 30, 1938.

OYSTERS AND CLAMS—CULLING ON NATURAL REEF REQUIRED,
SECTION 1807 C.G.L.

Dear Sir:

I have your letter of the 27th inst., the body of which reads as follows:

"Please refer to Section 1807, Compiled General Laws of Florida, 1927, originally Section 1249, Revised General Statutes of 1920, with reference to culling oysters and claims taken from natural bars.

"This section states that all oysters and clams taken from natural reefs of this State, shall be culled, unless otherwise herein provided for, and that all bedding shell shall be immediately replaced and scattered broadcast upon the natural reefs from which they are taken.

"Do I understand from this law that when oysters are taken from natural reefs and shucked that we should require the shell to be put back on the bars by the party who moves them? This is an important question and if required, means a lot to the oyster industry of Florida."

In reply your attention is called to Section 1807, Compiled General Laws of Florida, 1927, which appears to be the only statute relating to the subject of your inquiry, part of which Section reads as follows:

"All oysters and clams taken from the natural reefs of this State shall be culled, unless otherwise herein provided for, upon their natural reefs as taken. All oysters which measure less than three inches from hinge to mouth, and all bedding shells shall be

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immediately replaced and scattered broadcast upon the natural reefs from which they are taken. All clams under two inches, measured from hinge across at widest point, shall be returned to the bottom of the bed from where taken. In the determining what oysters shall be removed from marketable oysters, no oyster under three inches from hinge to mouth shall be included in the percentage of oysters under size: Provided, they adhere to the marketable oysters so closely that to remove the same would destroy either the oyster under size or the marketable oyster. * * * "

You will note that the above quoted Section relates only to the culling of oysters when taken from natural reefs and does not appear to require the return of shell to natural reefs after the oysters have been removed therefrom and have been shucked at a distant shucking plant. While the return of such shell would appear to be advisable, I do not find any law requiring the same.

In this connection, I may say that if leases require the return to the reefs of oyster shell after shucking the lessee would be bound by the terms of the lease.

August 30, 1938.

OYSTERS AND CLAMS—CULLING ON NATURAL REEF REQUIRED,
SECTION 1807 C.G.L.

Dear Sir:

I am in receipt of your letter of the 27th instant, part of which reads as follows:

"We are requested for an opinion concerning the culling of oysters and clams. The owners of leases contend that they are not required under our law to cull their oysters at the bars from which they are taken.

"What the writer would like to know is whether or not the owners of leased bars are required to cull their oysters at the bars and return their shell to the water?"

In reply your attention is called to that part of Section 1807, Compiled General Laws of Florida, 1927, reading as follows:

"All oysters and clams taken from the natural reefs of this State shall be culled, unless otherwise herein provided for, upon their natural reefs as taken. All oysters which measure less than three inches from hinge to mouth, and all bedding shells shall be immediately replaced and scattered broadcast upon the natural reefs from which they are taken. All clams under two inches,

CONSERVATION DEPARTMENT

measured from hinge across at widest point, shall be returned to the bottom of the bed from where taken. In the determining what oysters shall be removed from marketable oysters, no oyster under three inches from hinge to mouth shall be included in the percentage of oysters under size: Provided, they adhere to the marketable oysters so closely that to remove the same would destroy either the oyster under size or the marketable oyster." * * *

I find no specific law requiring owners of leases to cull their oysters at the bars from which taken, except the above quoted statute, which requires the culling of oysters at the bar when taken from natural reefs. If the leases cover any natural reefs the said statute requires such culling at the bar from which taken. Owners of leases not covering any natural reefs would not appear to be required to cull oysters when taken.

In this connection, I would suggest that you examine the leases involved and if the lessee has contracted to cull oysters at the bar from which taken, such contract would be binding.

SALT WATER FISHING

September 15, 1937.

RE: CHAPTER 14119 OF 1929—CHAPTER 17555 OF 1935—HOUSE BILL NO. 1782, CHAPTER 17929 OF 1937—HOUSE BILL NO. 1041—CHAPTER 18785 OF 1937

Dear Sir:

I am in receipt of your letter of the 19th ultimo, making inquiry if Chapter 14,119, Special Acts of 1929, is still in effect or has been superseded by some other law.

Your attention is called to Chapter 17,555 of 1935, Special Acts, amending Section 3 of Chapter 14,119 of 1929, so as to make it optional with the counties as to whether they shall employ a warden.

You will note that Chapter 14,119 of 1929, relates to salt water fishing in Old Tampa Bay, Hillsborough Bay and Tampa Bay and all tributaries in Hillsborough and Pinellas Counties.

Your attention is called to House Bill No. 1782, Chapter 17,929 of 1937, relating to counties having a population between 64,000 and 65,000, according to the last State Census, which applies to Pinellas County. This Act authorizes the use of pound nets in the salt waters of such counties provided that no such nets shall be set or used at any point nearer than three miles of the shore line.

CONSERVATION DEPARTMENT

Your attention is also called to House Bill No. 1041, Chapter 18,785 of 1937, Special Acts, relating to the taking of fish in Anclote River and its tributaries, or any bayou, bay or other body of water connecting or emptying into the Anclote River in Pinellas County, but not applying to that portion of the Anclote River in Pinellas County that lies west of the line found by projecting the northern and southern center line of Section 3, Township 27 South, Range 15 East, to the County line between Pinellas and Pasco Counties.

These are the only statutes we have been able to find in any way affecting Chapter 14,119 of 1929, but your attention is called to the fact that the Special Acts of 1937 have not been published and it is necessary for us to rely on the temporary index of such laws in the office of the Secretary of State.

September 15, 1937.

**SALT WATER FISHING—CHAPTER 10901, SPECIAL ACTS OF 1925—
CHAPTER 13635 OF 1929**

Dear Sir:

I am in receipt of your letter of July 28, 1937, making inquiry if Chapter 10,901, Laws of Florida, Special Acts of 1925, or Chapter 13,635, Laws of Florida, Acts of 1929, have been set aside because of not being constitutional.

Chapter 10,901, Special Acts of 1925, is an Act to protect and regulate salt water fishing industry in Manatee River, Terra Ceia Bay, Palma Sola Bay, Claim Bay and Bishops Harbor, in Manatee County. Chapter 13,635 of 1929 is an Act regulating salt water fishing in counties having a population of not more than 23,060 nor less than 23,050, according to the 1925 Census and applies to Manatee County.

I find no other laws affecting the above two statutes, but in this connection I deem it proper to say that the statutes of 1937, both General and Special, have not yet been printed, and it is necessary that we rely upon the temporary index of such laws in the office of the Secretary of State.

I have made a search in Shepard's Citations and do not find that either of the above Acts have been passed upon by our Supreme Court. We have no legal citations indicating the findings of Circuit Courts. The finding of the Circuit Court in and for Manatee County, if any, with reference to the above Acts, would be effective and I suggest that you consult the Clerk of the Circuit Court to ascertain if either of said Acts have been passed upon by the Circuit Court.

CONSERVATION DEPARTMENT

October 29, 1937.

SALT WATER FISHING—SEIZURE OF FISH, NETS AND BOATS—
CHAPTERS 18571, 17914, 17930, 17928, ACTS OF 1937—SECTIONS
1861, 1877, 8051, 8059, 8060 AND 8062, C.G.L. OF FLORIDA, 1927

Dear Sir:

I am in receipt of your letter of the 22nd instant making inquiry as to the confiscation of fish, nets and boats in Hernando County in cases of violation of the salt water fishing law. You refer to Chapter 18,571, Acts of 1937, particularly with reference to Hernando County. I see no provision in this particular Act relating to the confiscation of fish, nets or boats. However, there are certain general statutes of the State relating to such matters.

The only statute I find relating to the confiscation of fish illegally taken is Section 1, Chapter 17,914, Laws of Florida, Acts of 1937, which provides that it shall be unlawful for any wholesaler, shipper or transporter to sell, ship or transport any fish or sea food without the permit number on all containers, and any and all fish or sea food sold, shipped or transported in any manner without the wholesaler's permit number on all invoices and containers shall be seized by the Supervisor of Conservation or his duly authorized deputies and agents and sold for the best possible price, and the proceeds shall be deposited in the State Treasury to the credit of the Conservation Fund.

The only general statutes which I find with reference to the seizure of nets are as follows:

1. Section 1877, Compiled General Laws of Florida, 1927, reading as follows:

"All illegal nets captured by the shell fish commissioner without prisoners, prior to this law, are hereby declared confiscated by the State and the shell fish commissioner is authorized to destroy the bunts of such nets and to sell the corks, leads and lines for best possible cash price and deposit the proceeds in the State Treasury. All illegal nets captured while being fished without prisoners shall be disposed of in a like manner."

2. Section 8051, Compiled General Laws of Florida, 1927, reading as follows:

"Whoever fishes for shad between sundown on Saturday afternoon and sunrise on Monday morning of every week shall be punished by a fine not exceeding one hundred dollars, and by confiscation of the boat and fishing tackle used in such unlawful acts."

3. Section 8059, Compiled General Laws of Florida, 1927, reading as follows:

CONSERVATION DEPARTMENT

"In all cases of arrest and conviction for the use of illegal nets, as provided in sections 8053, 8055, 8056, 8057, 8058 ad 8065, such illegal nets shall be considered a nuisance, and the court shall order the bunts of such illegal nets to be destroyed immediately after such trial and conviction, and the leads, corks and lines belonging to such nets shall be returned to the owner."

You will note that the provisions of Section 8059 relate only to the violations against certain enumerated Sections of the Compiled General Laws of Florida.

4. Chapter 17,928, Laws of Florida, Acts of 1937, which provides in all cases of arrest and conviction for a violation of the provisions of said Act, and all illegal nets, devices, boats and appliances used in said violation shall be considered a nuisance and the Court may in its discretion order such illegal nets, devices, boats and appliances destroyed after such trial and conviction.

5. Chapter 17,930, Laws of Florida, Acts of 1937, which provides in Section 22 thereof that all nets that do not comply with the terms of said Act, or are taken while in use in said reservation as hereby declared illegal, shall be confiscated and burned by the Sheriff of the County in which the violation of the Act shall occur and the same shall be burned within ten days after the conviction of the person or persons for violation of the Act, and the Court trying said cause shall make a suitable order to the Sheriff of such county for such destruction.

The only statutes that I have found relating to the seizure of boats are as follows:

Section 8062, Compiled General Laws of Florida, 1927, which provides that any owner, captain, person, agent, officer, crew or member thereof, of any vessel or boat violating the provisions of Section 8060 shall subject the vessel and cargo to seizure by the Shell Fish Commission, or his deputies, and taken into custody and delivery to the Sheriff of the county in which the seizure is made and shall be liable to forfeiture on appropriate proceedings being instituted by the Shell Fish Commissioner before the Courts. The pealty under Section 8062; Compiled General Laws of Florida, 1927, relating only to violations of Section 8060, originally Section 8 of Chapter 6877, Acts of 1915, appears not to be effective since Section 8060, with reference to closed season for mullet, appears to be superseded by the later statute, Section 1861, Compiled General Laws of Florida, 1927, originally Section 3 of Chapter 10,123 of 1925.

2. Section 8051, Compiled General Laws of Florida, above mentioned, relates both to nets and boats.

3. Chapter 17,928, Laws of Florida, Acts of 1937, above mentioned, relates both to nets and boats.

CONSERVATION DEPARTMENT

You state there are a great many Special Laws prohibiting fishing in certain waters of certain counties and you make inquiry as to your authority for confiscating fish, nets and boats in each county having Special Laws. Each Special Law would probably have to be considered separately and I could not give a general opinion that would apply to all Special Laws. However, I may say generally that unless a Special Law contains special provisions on the subject, the general laws would probably apply, except in cases where the provisions of the general laws apply to specific violations, or violations not mentioned in the Special Laws.

October 4, 1937.

SALT WATER FISHING—STOP-NET FISHING IN CREEKS AND
STREAMS UNLAWFUL UNDER SECTIONS 8057-8059 C.G.L.

Dear Sir:

I am in receipt of your letter of the 1st instant, the body of which reads as follows:

"We have a difficult situation near the north end of Gasparilla Island, across what is commonly known as Gasparilla Passwaters. Mr. * * * owns all the land close to the mouth of Carl Creek and he has under lease all the lands on both sides of the creek, together with all riparian rights thereto. As far as I know the creek is not listed as a navigable stream.

"Mr. * * * has built fences in the shallow waters on either side of the channel so he can stop-net fish going up into the creek. We would like to destroy the fences and allow the fish to pass freely up the creeks at all positions of the tide to make stop-netting more difficult.

"All the streams and tidal waters being under this Department, I would like to know if we would be justified in having our enforcement officers to remove these obstructions."

In reply I beg to say the statutes applicable to your inquiry appear to be Sections 8057 and 8059, Compiled General Laws of Florida, 1927, reading as follows:

8057. "It shall be unlawful for any person, persons, firm or corporation to place or set any seine, net or other set device across or in any of the rivers, creeks, bayous or passes in the State of Florida for the purpose of stop-netting such rivers, creeks, bayous or passes for the purpose of catching fish. Any one violating any of the provisions of this section shall be fined in the sum of not exceeding six hundred dollars, or by imprison-

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ment not exceeding one year, or by both such fine and imprisonment."

8059. "In all cases of arrest and conviction for the use of illegal nets, as provided in sections 8053, 8055, 8056, 8057, 8058 and 8085, such illegal nets shall be considered a nuisance, and the court shall order the bunts of such illegal nets to be destroyed immediately after such trial and conviction, and the leads, corks and lines belonging to such nets shall be returned to the owner."

The said statutes appear to contemplate first an arrest and conviction, after which provision is made for disposition of the nets.

March 12, 1937.

**SALT WATERS—POLLUTION BY ERECTION OF PAPER MILL—
DAMAGE TO SEAFOOD.**

Dear Sir:

I am in receipt of your letter of the 11th instant in which you state you have a number of inquiries as to whether the erection and operation of a paper mill located at Jacksonville would pollute the waters in the St. Johns River and Atlantic Ocean and damage the fish and other salt water sea food. You make inquiry if there is any law that would require the operator of such a mill to secure a permit from your Department and give guarantees in advance that the waste waters would be properly filtered before being turned into the streams and if you Board or yourself either has a right to demand that such permit be secured.

Section 1870, Compiled General Laws of Florida, 1927, which is a part of the salt water fishing laws, makes it unlawful to discharge oil into any of the salt waters of the State of Florida. This appears to be the only statute among the laws relating to your Department which in any way pertains to the subject of your inquiry. Section 7690 makes it unlawful to deposit in any of the lakes, rivers, streams or ditches in this State any rubbish, filth or poisonous substances liable to affect the health of persons, fish or livestock, but under the provisions of said Section the carrying into effect of such Section is placed under the supervision of the State Board of Health. It appears, therefore, that you and your Board are without authority in the premises except with reference to discharge of oil into the salt waters.

CONSERVATION DEPARTMENT

March 12, 1937.

SHRIMP BOATS—OPERATION IN THE WATERS OF THE ATLANTIC OCEAN.

Dear Sir:

I am in receipt of your letter of the 11th instant with reference to the limitation of the operation of shrimp boats in certain waters of the Atlantic Ocean.

In reply your attention is called to Section 8049, Compiled General Laws of Florida, 1936 Supplement, formerly Section 5817, Revised General Statutes of Florida, 1920, amended by Chapter 14,720, Laws of Florida, Acts of 1931. Your attention is also called to Section 1865, Compiled General Laws of Florida, 1927, originally Section 6 of Chapter 10,123, Laws of Florida, Acts of 1925. I quote each of said Sections as follows:

8049. "No seine, gill-net or other nets, except a common cast net, shall be set or used for the taking of food fish within one mile of any pass or inlet, or continuation thereof, from the Atlantic Ocean to any inland waters of this State, or in any of the tributaries of the rivers emptying into the Atlantic Ocean, and any person found guilty of the violation of this section shall be punished by fine not exceeding one hundred dollars, or by imprisonment not exceeding ninety days. Provided, that nothing in this section shall be so construed as to affect in any manner the right of fishermen on the Gulf coast, including rivers and bays, in the capture of mullet and other fish, from using any seines or other nets they may think proper."

1865. "It shall be unlawful for any person, persons, firm or corporation to take shrimp or prawn from any of the inside waters of the State of Florida, by the use of any device, other than that known and commonly called a cast net: Provided, however, for the purpose of this law, that St. George's sound and Apalachicola bay in Franklin county and Pensacola bay in Escambia county are considered and shall be outside waters."

The above appear to be all of the statutes pertaining to the subject of your inquiry. For your information I beg to say in my opinion bays and gulfs, as well as lakes and rivers, are inside waters of the State.

March 18, 1937.

SHRIMP—NO AUTHORITY GRANTED TO PROHIBIT TAKING.

Dear Sir:

Answering your letter of the 16th inst., I beg to say I find no law authorizing you or the State Board of Conservation to prohibit the taking

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of shrimp within 1 mile from the shore of the Atlantic Ocean except on inside waters of the Atlantic Ocean, such as gulfs and bays, where under the law the taking of shrimp is unlawful except when taken with a cast net.

November 20, 1937.

SHRIMP—CLOSED SEASON—METHOD OF TAKING—SECTION 1865,
C.G.L. OF FLORIDA, 1927—CHAPTER 17256 OF 1935.

Dear Sir:

Answering your letter of the 18th instant, I beg to say in my opinion Chapter 17,256, Laws of Florida, Acts of 1935, does not repeal Section 1865, Compiled General Laws of Florida, 1927. Section 1865 relates to devices for taking shrimp and Chapter 17,256 relates to closed seasons on taking shrimp.

September 15, 1937.

SHRIMP—METHOD OF TAKING—CLOSED SEASON—SECTION 1865,
C.G.L. 1927—SECTION 1, CHAPTER 17,256 OF 1935, NOW
SECTION 1859 (4), C.G.L. 1936 SUPPLEMENT.

Dear Sir:

I am in receipt of your letter of the 4th ultimo referring to Section 1865, Compiled General Laws of Florida, 1927, relating to shrimp, reading as follows:

"It shall be unlawful for any person, persons, firm or corporation to take shrimp, or prawn from any of the inside waters of the State of Florida, by the use of any device, other than that known and commonly called a cast net: Provided, however, for the purpose of this law, that St. George's sound and Apalachicola bay in Franklin County and Pensacola bay in Escambia County are considered and shall be outside waters."

The method of taking shrimp is limited by said Section to cast nets. The proviso in said Section eliminates St. George's sound and Apalachicola bay in Franklin County and Pensacola bay in Escambia County from the provisions of such Section.

You also refer to Section 1 of Chapter 17,256, Laws of Florida, Acts of 1935, now Section 1859 (4), Compiled General Laws of Florida, 1936 Supplement, reading as follows:

"It shall be unlawful to take or catch shrimp or prawn inside of any bay or sound or pass or at any place within one mile of the shore in any of the waters of the Gulf of Mexico or its tributaries

CONSERVATION DEPARTMENT

within the jurisdiction of the State of Florida, during the period from February first to April first, or during the period from August first to October first in any year."

Said Section provides for a closed season for the taking of shrimp or prawn from February first to April first and from August first to October first in any year in all the waters of the Gulf of Mexico or inside of any bay or sound or pass or at any place within one mile of the shore in any of the waters of said Gulf. There is no exception in said Act and the same therefore applies to all of the gulf waters named, including St. George's sound, Apalachicola bay and Pensacola bay.

July 22, 1937.

SHRIMP OR PRAWN—CLOSED SEASON FOR TAKING IN WATERS
OF GULF OF MEXICO.

Dear Sir:

I am in receipt of your letter of the 16th instant, with reference to closed seasons for the taking of shrimp and prawn in the waters of the Gulf of Mexico bordering the State of Florida.

You refer to Section 1865, Compiled General Laws of Florida, originally Section 6 of Chapter 10123, Acts of 1925, which makes it unlawful to take shrimp or prawn from inside waters of the State by any device except a cast net, provided that St. George's Sound and Apalachicola Bay in Franklin County and Pensacola Bay in Escambia County shall be considered as outside waters.

You also refer to Section 1859 (4), Compiled General Laws of Florida, 1927, 1936 Supplement, originally Section 1 of Chapter 17256 of 1935, which makes it unlawful to take or catch shrimp or prawn inside of any bay or sound or pass or at any place within one mile of the shore in any of the waters of the Gulf of Mexico or its tributaries within the jurisdiction of the State of Florida, during the period from February 1 to April 1, and during the period from August 1 to October 1, in any year.

Section 4 of this Act also repeals all laws in conflict therewith.

In reply I beg to say that in my opinion, under the provisions of said Chapter 17256 of 1935, which repeals all laws in conflict therewith, all of the waters of the Gulf of Mexico inside of any bay or sound or pass or at any place within one mile of the shore in any of the waters of the Gulf of Mexico, including St. George's Sound, Apalachicola Bay, and Pensacola Bay, are closed for the taking of shrimp or prawn during the period from February 1 to April 1, and from August 1 to October 1, in any year.

SECTION 10
DADE MEMORIAL COMMISSION

August 6, 1937.

GOVERNOR NOT AUTHORIZED TO APPOINT JUSTICE OF SUPREME
COURT AS MEMBER.

Dear Sir:

This is in response to your request for an opinion as to whether Judge Glenn Terrell of the Florida Supreme Court is eligible for appointment as a member of the Dade Memorial Commission created by Chapter 8503, Laws of Florida, Acts of 1921.

It is my opinion that the members of the Dade Memorial Commission are officers, and this being so, Judge Terrell could not hold this office and the office of Justice of the Supreme Court of Florida at the same time, as to do so would be in violation of the provisions of Section 15 of Article XVI of the Constitution of Florida.

SECTION 11

EVERGLADES DRAINAGE DISTRICT

December 15, 1937.

ACREAGE TAXES—STATE TREASURER AUTHORIZED TO DISBURSE FUNDS.

Dear Sir:

I acknowledge receipt of your letter of December 15, 1937, in which you state:

"Under date of December 30, 1936, I was served with an Alternative Writ of Mandamus, issued out of the Supreme Court on behalf of A. M. Lawler, under which I impounded \$9,170.00, in Acreage Taxes of Everglades Drainage District.

"Under date of January 30, 1937, I was served with a similar writ on behalf of the same party out of the Circuit Court of Leon County, under which I impounded \$20,540.00 of similar funds.

"Thereafter an order was procured in the Circuit Court of Dade County on behalf of one W. O. Lassiter, under date of April 21, 1937, the third paragraph of which reads as follows: 'That the defendant, W. V. Knott, as Treasurer and Custodian of the funds of the Everglades Drainage District, be and he is hereby restrained and prohibited from paying out any of the funds in his hands, which are proceeds of acreage taxes levied and collected for the benefit of Everglades Drainage District, upon any warrants heretofore issued and which have been or may be presented to him for payment, until further orders of this Court.'

"I have now been served with a preemptory Mandamus issued by the Supreme Court and the Circuit Court in the above mentioned Mandamus proceeding, together with warrant of the Board of Commissioners of the Everglades Drainage District to pay the bonds and coupons described in said preemptory writs, which warrant is dated after April 21, 1937, and is for the purpose compiled for with the said preemptory Writ of Mandamus.

"Please furnish me with your formal opinion as to whether or not I may honor the said warrants and disburse the said funds."

Under the facts stated in your letter, it is my opinion that it is your duty to comply with the preemptory writs, thus honoring the said warrants and disbursing the said funds.

EVERGLADES DRAINAGE DISTRICT

February 26, 1937.

MAINTENANCE TAX—PAYMENTS AUTHORIZED

Dear Sir:

I have received your letter of February 26, 1937, reading as follows:

"Various mandamus proceedings have been instituted against the undersigned, as Treasurer and Custodian of the monies and funds of Everglades Drainage District. These mandamus suits are still pending. With the exception of one of them, all seek the payment either of bonds and coupons of said District, or of judgments recovered upon such bonds and coupons; and recourse is sought therein only as against funds of the District in my hands, other than the proceeds of the one mill maintenance tax. The last suit seeking recourse against the proceeds of the one mill maintenance tax so in my hands, is one in which the writ was served on me on February 12, 1937. In that case, the writ does not purport or attempt to reach and sequester remittances derived from such one mill maintenance tax coming to my hands subsequent to the date of the service of said writ.

"Since the suit last above referred to was filed, and the writ therein served on me, additional funds have come to my hands as the result of tax collections. Some came already segregated as to the source from which derived. However, remittances from redemptions of tax certificates were not "broken down" in such manner as that I could, upon their receipt, say what portion of each such latter remittance was derived from the proceeds of acreage taxes, what portion from proceeds of the one mill maintenance tax, etc.

"However, at the instance of the Board of Commissioners of said District, I have now examined the original records kept by the various clerks, concerning such redemptions, and these records definitely show which portion of said remittance from redemptions was derived from collections for acreage taxes, which portion derived from proceeds of the one mill maintenance tax, etc. In other words, such records and the information supplied me by the Board of Commissioners of Everglades Drainage District, show a complete "breakdown" as to such remittances from redemptions. I wish to be advised whether, under the circumstances, I may honor warrant drawn in proper form, by making payment thereof, in part, out of that portion of said remittances accruing subsequent to February 12, 1937, from redemptions shown to have been derived from said one mill maintenance tax."

Under the circumstances outlined by you, I am of the opinion that you may safely honor such warrant insofar as the remittances from re-

EVERGLADES DRAINAGE DISTRICT

demptions of tax certificates made and received after February 12, 1937, and shown, as stated by you, to have been derived from the proceeds of the one mill maintenance tax, are concerned. In other words, since the writs served on you subsequent to the receipt of that portion of the remittances derived from the one mill maintenance tax, do not seek recourse against it, and since that portion of the remittances from redemptions derived from such one mill maintenance tax, is clearly susceptible of identification, the situation with respect to such portion is the same, in my opinion, as if it had been originally remitted with the sources thereof shown at that time, instead of appearing later upon an examination of the records.

SECTION 12

EVERGLADES NATIONAL PARK COMMISSION

April 21, 1937.

ELECTION AND TERM OF CHAIRMAN

Dear Sir:

I am in receipt of your letter of the 13th instant referring to Chapter 16,996, Laws of Florida, Acts of 1935, providing for the Everglades National Park Commission, providing for the appointment of such Commissioners by the Governor and for the selection of a Chairman by the members of such Commission. You make inquiry if such Chairman is selected for a period of 4 years or if the Commissioners could by another vote elect another Chairman.

That part of the statute relating to the election of a Chairman of the Commission reads as follows:

"The said Cairman shall be elected from among the twelve Commission members by a majority vote of the members."

The statute provides for a 4 year terms of Commissioners but makes no provision as to the term of the chairmanship. In such situation, it is my opinion that the Commission may change the chairmanship of such Commission, however questionable as a matter of policy such course might be, provided such changes are made at some regularly specified meeting or after due notice to all members of the Commission.

SECTION 13
EXAMINERS OF NURSES

NURSES—REGISTRATION. REQUIREMENTS—SECTION 7,
CHAPTER 7831, ACTS 1919

Dear Sir:

I am in receipt of your letter of the 1st instant, the body of which reads as follows:

"We are enclosing copy of all the papers we have on file in this office concerning * * *. Is there any way I can register this young man? He can secure a position in the G. U. ward of a Florida Hospital if he can obtain his Florida registration."

Your attention is called to Section 3514, Compiled General Laws of Florida, 1927, originally Section 7 of Chapter 7831, Laws of Florida, Acts of 1919, reading as follows:

"The board, upon written application and the receipt of ten dollars as registration fee may issue a certificate without examination to those who have been registered as registered nurses, under the law of another State having the required equivalent to those of Florida: Provided, that the board shall be the sole judge of credentials of any nurse admitted to registration without examination."

Your attention is also called to Section 3515, under the same compilation, or Section 8 of said Chapter 7831, naming the subjects upon which applicants are required to be examined.

There is no showing in the papers forwarded with your letter that the applicant is eligible to a certificate as registered nurse under said Sections.

SECTION 14

FLORIDA BOARD OF FORESTRY

February 7, 1938.

APPROPRIATIONS—UNDER CHAPTERS 16772 AND 17027
OF 1935—CHAPTERS 17707 AND 18151 OF 1937*Dear Sir:*

I am in receipt of your letter of the 24th ultimo, the body of which reads as follows:

"Will you please advise whether the Florida Board of Forestry may use funds appropriated by Chapter 16772, Acts of 1935, and Chapter 17707, Acts of 1937, for purposes of State Parks and State Forests, or whether expenditures for these purposes are limited by Chapter 17027, Acts of 1935, and Chapter 18151, Acts of 1937?"

Chapter 17027, Acts of 1935, relates to State Forests or State Parks. Section 5 of said Act makes an appropriation of \$25,000.00 for State Forest purposes and State Park purposes for each of the two years of the biennium beginning July 1, 1935.

Chapter 18151, Acts of 1937, is an Act making an appropriation of \$12,500.00 for State Forest purposes and \$12,500.00 for State Park purposes for each of the two years of the biennium beginning July 1, 1937.

In my opinion the appropriations in said Chapters 17027 of 1935 and 18151 of 1937 may not be used for any purposes other than the purpose of said Acts, respectively.

Chapter 16772 of 1935 is the General Appropriation Act and makes appropriation to the Florida State Board of Forestry as follows:

"FLORIDA STATE BOARD OF FORESTRY

	Annually
Salaries	\$29,950.00
Necessary and Regular Expenses	25,250.00
Necessary and Regular Expenses (Additional)	29,000.00"

Chapter 17707, Acts of 1937, is the General Appropriation Act and makes an appropriation for the Florida State Board of Forestry as follows:

"FLORIDA STATE BOARD OF FORESTRY

Salaries	\$ 45,000.00
Necessary and Regular Expenses	100,000.00"

It is a well settled principle that the history of legislation may be properly considered in the construction of a statute. I think it may

FLORIDA BOARD OF FORESTRY

properly be assumed that the State Legislature in making the General Appropriation for the biennium beginning July 1, 1935 and the biennium beginning July 1, 1937 took into consideration the State Budget. By reference to the State Budget prepared for each of said bienniums it will be noted that the amounts requested and approved for the State Board of Forestry in each instance included items both for park and forest purposes. Since the Appropriation Act of 1935, after reciting the amount appropriated for salaries and for necessary and regular expenses, contains an additional item for necessary and regular expenses it would appear that the Legislature had in mind in making such additional appropriation the taking care of items in addition to the usual fire protection work of said Board.

In view of the above, it is my opinion the appropriations made in the said General Appropriation Acts of 1935 and 1937 may properly be expended for forest and for park purposes.

August 24, 1938.

**AUTHORITY TO ACQUIRE PROPERTY—CHAPTER 17027,
ACTS OF 1935**

Dear Sir:

This is in reply to your letter of August 19th.

You request my opinion concerning substantially the following problem: The Florida Board of Forestry in 1935 acquired certain lands in Jackson County from Florida Caverns, Inc., a Florida corporation, subject to certain covenants and agreements mentioned in the deed of conveyance. The covenants and agreements required the Florida Board of Forestry to pay a large percentage of the receipts from concessions at Florida Caverns State Park to said corporation. The Federal Government has threatened to remove a C. C. C. Camp now located at said park unless the Florida Board of Forestry obtains from said corporation a release of the covenants and agreements, hereinabove referred to. The said corporation has offered to execute such a release in consideration of the sum of \$12,500.00, with simple interest, to be paid wholly from the proceeds derived by the Board from the operation of the Park.

It is my opinion that the Florida Board of Forestry has authority under Section 3 of Chapter 17027, Laws of Florida, Acts of 1935, to enter into the proposed agreement with Florida Caverns, Inc., for the release of said covenants. The pertinent provisions of said Section 3 are as follows:

"The said Board is, however, authorized, permitted and empowered to receive to hold the custody of and exercise the control of any lands, and to set aside into a separate, distinct and in-

FLORIDA BOARD OF FORESTRY

violable fund, the proceeds which may be derived from the sales of the products of such lands or the *use thereof in any manner*; and the proceeds of the sale of such lands, save the twenty-five (25) per cent of the proceeds thereof to be paid into the State School Fund as provided by the Constitution; and the said Board is authorized, permitted and empowered to use and apply such funds for the *acquisition, use, custody, management, development or improvement of any lands vested in or subject to the control of such Board.*" (Italics ours.)

SECTION 15

FLORIDA CRIPPLED CHILDREN'S COMMISSION

April 1, 1938.

OFFICE AND SALARY OF MEMBER

Dear Sir:

I am in receipt of your letter of the 31st ultimo, the body of which reads as follows:

"I respectfully refer you to Chapter 13620, General Laws of Florida, 1929, and Section 2 thereof, in which it states that the Commission "shall maintain a central office at the Capitol of the State," and ask that you define for me the words "central office." Does this central office mean the principal office wherein is contained the official records of the Commission?

"Also, may I ask you if, in accordance with Section 3, a member of the Commission could be paid a salary for services rendered even though that member be called the Secretary of the Commission?"

In reply to your first question I beg to say the words "shall maintain a central office at the Capital of the State" indicates to my mind the principal office for receiving and sending out correspondence and keeping the records of such Commission and where the Chief Executive can always be in close touch with such Commission.

Answering your second question as to whether a member of the Commission can be paid a salary for services rendered should he be called the Secretary of the Commission, your attention is called to Section 10 of Chapter 13,620, Laws of Florida, Acts of 1929, creating the said Crippled Children's Commission, which Section provides in part as follows: "Said Commission shall *employ* a Secretary who shall have a proper knowledge of community organization work, and an understanding of the fundamental principles of public health and social work and who shall have had at least one year's actual experience and training in an accredited public health or social work organization; that said Commission shall have the power to remove the Secretary at will and shall have and employ all necessary Clerks, servants and employees not otherwise provided for herein."

Your attention is further called to Section 3 of said Act, which provides "that the members of said Commission shall be paid *only their actual expense* while in the performance of their duty and in traveling to and from, or upon the same."

From the above it appears that the statute contemplates that any Secretary of the Commission should be not only one possessed of certain statutory qualifications but some one other than one of the Commis-

FLORIDA CRIPPLED CHILDREN'S COMMISSION

sioners. In such situation, I do not think it proper for a member of the Commission to receive any salary under the statute even though he should serve as Secretary of the Commission.

June 13, 1938.

TRANSPORTATION OF PATIENTS—LIABILITY OF OWNER OR OPERATOR OF PRIVATE CAR

Dear Sir:

I am in receipt of your letter of the 31st ultimo, enclosing communication under date of the 19th ultimo, from * * *. You state that she is Clerk of the Southern District of your Commission and you request to be advised concerning the inquiries made in her letter.

Some of the inquiries appear to relate to matters of policy of the Board which are probably covered by your rules and regulations and concerning which you will doubtless be able to advise. The other matters appear to be embraced under two heads, as follows:

1. Liability of owner or operator of motor vehicle to guest or passenger without pay.
2. Use of Commission funds for transportation.

With reference to the first question, I beg to say that our Supreme Court has held that an automobile host is liable to a guest for negligent operation of his automobile. See *Green vs. Miller*, 102 Fla. 767, 136 So. 532; *Depfer vs. Walker*, 123 Fla. 862, 125 Fla. 189, 169 So. 660; *Carver vs. Chase*, 128 Fla. 287, 174 So. 408. With further reference to such liability, I call your attention to Chapter 18,033, Laws of Florida, Acts of 1937, which limits the liability of such hosts to negligence. I quote you Section 1 of said Act, as follows:

"That no person, transported by the owner or operator of a motor vehicle as his guest or passenger, without payment for such transportation, shall have a cause of action for damages against such owner or operator for injury, death or loss, in case of accident, unless such accident shall have been caused by the gross negligence or wilful and wanton misconduct of the owner or operator of such motor vehicle and unless such gross negligence or wilful and wanton misconduct was the proximate cause of the injury, death or loss for which the action is brought, provided that the question or issue of negligence, gross negligence, and wilful or wanton misconduct, and the question of proximate cause, and the issue or question of assumed risk, shall in all such cases be solely for the jury. Provided that nothing in this Act shall apply to school children or other students being transported to or from schools or places of learning in this State."

FLORIDA CRIPPLED CHILDREN'S COMMISSION

With reference to the second matter concerning the use of Commission funds for transportation of patients, I beg to say I find no specific provision in the statute for such payment. However, your attention is called to Section 3640 (6), Compiled General Laws of Florida, 1936 Supplement, which provides that the Commission shall have the power to provide for the surgical and medical care or treatment of indigent crippled children. Such language, in my opinion, contemplates the use of Commission funds for transportation if necessary. While this is true, the Commission may, in my opinion, adopt if it sees fit a policy of requiring free transportation by parties interested in order to secure service to a greater number of such children. In connection with the above mentioned authority for use of Commission fund if necessary, your attention is called to Section 3640 (11), Compiled General Laws of Florida, 1936 Supplement, which provides that the Chapter relating to the Crippled Children's Commission shall be liberally construed to the end that every indigent or partially indigent child in Florida may have promptly and efficiently the best surgical and medical care available in the State.

SECTION 16

FLORIDA INDUSTRIAL COMMISSION

May 12, 1937.

FLORIDA UNEMPLOYMENT COMPENSATION AND FLORIDA STATE
EMPLOYMENT SERVICE—GOVERNOR NOT AUTHORIZED
TO APPOINT DIRECTORS.*Dear Sir:*

In your letter of this date you request my opinion as to whether the position of the Director of the Unemployment Compensation Division and the Director of the Florida State Employment Service Division of the State Employment Service created by Section 11 of Senate Bill No. 305 (this bill was vetoed by Governor and Senate Bill No. 1009 was then introduced and passed. See Chapter 18402 Acts 1937) are offices of mere employments, and if they are offices whether that portion of the bill is constitutional.

It is my opinion that these positions are offices which the Constitution requires to be filled by election or appointment by the Governor, and to that extent the provisions of Section 11 of the Act authorizing the Commission to appoint, fix the compensation of, and prescribe the duties of said Directors, are in conflict with Section 27 of Article III of the Constitution of Florida.

October 6, 1938.

FLORIDA UNEMPLOYMENT COMPENSATION LAW — AGRICUL-
TURAL LABOR.*Dear Sirs:*

Your letter of August 23 encloses ruling of the Bureau of Internal Revenue dated January 22, 1938, and correspondence between the Florida Industrial Commission and Messrs. K. & G., attorneys for W. H. T. Dairy. You ask to be advised as to whether or not services performed by employees of this dairy, in connection with the bottling of milk, the pasteurizing of milk, the separation of milk from the cream, and delivery of the milk and cream sold at retail, constitute "agricultural labor" within the meaning of that term as used in the Florida Unemployment Compensation law.

The above mentioned law, Chapter 18402, Acts of 1937, exempts "agricultural labor" from the provisions of the Act, but does not attempt to define this term. The Florida Industrial Commission has found that the type of services above mentioned do not constitute "agricultural labor" within the meaning of the Act. The Bureau of Internal Revenue has made a similar finding with respect to an identical provision in the Federal Social Security Act. In my opinion, the ruling of the Florida Industrial Commission is entirely justified.

FLORIDA INDUSTRIAL COMMISSION

October 29, 1938.

FLORIDA UNEMPLOYMENT COMPENSATION LAW—CHAPTER 18402,
LAWS OF FLORIDA, Section 3-G IV—SAME INTERESTS.*Dear Sirs:*

You have requested my opinion as to whether or not the employees of Corporation A and Corporation B can be combined pursuant to Section 3-G IV of Chapter 18402, Laws of Florida, Acts of 1937 (Florida Unemployment Compensation Act). From the information you have submitted it appears:

- 1—Corporation A is engaged in selling shoes at retail.
- 2—Corporation B is engaged in selling ladies' ready-to-wear at retail.
- 3—Ninety-eight percent of the stock in A corporation is owned by the husband and two percent by the wife.
- 4—Ninety-eight percent of the stock in B corporation is owned by the wife and two percent by the husband.
- 5—The shoe business and the ladies' ready-to-wear business are carried on in the same place.
- 6—The same person manages both businesses.
- 7—Both businesses are operated as parts of the same unit.

Section 3-G IV of said Act reads as follows:

"An employing unit which, together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, * * * and which, if treated as a single unit with such other employing units or interests, or both, would be an employer under paragraph I of this sub-section;"

In view of the distribution of the stock, it seems apparent that one corporation is controlled by the husband and that the other is controlled by the wife. The question to be decided is: Do the husband and wife constitute the "same interests" within the meaning of the above quoted section of the Act?

The language employed is similar to that used in Section 240 (b) of the Revenue Act of 1918, which reads as follows:

"For the purpose of this section two or more domestic corporations shall be deemed to be affiliated * * * if substantially all the stock of two or more corporations is owned or controlled by the *same interests*. (40 Stat. 1081 and 42 Stat. 260, § 240 (a, c))." (Italic added)

FLORIDA INDUSTRIAL COMMISSION

This provision has been construed in several Court cases and Board of Tax Appeals rulings. (See annotations found in paragraphs 30-34 under 26 U.S.C.A. Sec. 141). In the case of Eby Shoe Co. vs. United States, 44 F. (2d) 273, part of the opinion of the Court of Claims reads as follows:

"In Germantown Draid Company, 3 B. T. A. 1336, 1339, the meaning of 'the same interests' is further discussed and defined:

"The 'same interests' does not necessarily mean the same individuals. The relationship between the individuals and the facts and circumstances of the case should be considered in determining whether different individuals are in fact the 'same interests.' Family groups owning stock in different corporations, under the circumstances of this case, may fairly be said to be the same interests.' * * *

"The facts, taken into consideration with the further fact, fully disclosed by the findings, that the two companies during the years in question were practically operated as one business unit with the apparent consent of the stockholders of both companies, unquestionably show that substantially all the stock of both corporations was owned and controlled by the same interests."

On the basis of the facts presented, I am of the opinion that the husband and wife constitute the "same interests" within the meaning of Section 3 G IV, and that such provision of the Act is applicable to the factual situation presented here.

August 2, 1937.

FLORIDA UNEMPLOYMENT COMPENSATION LAW—CONTRIBUTIONS FIRST ACCRUE JANUARY 1, 1937

Dear Sir:

I acknowledge receipt of your letter of July 27, 1937, in which you state:

"Section 8 CONTRIBUTIONS—Paragraph (A) of the Florida Unemployment Compensation Law (Chapter 18,402, Acts of 1937 Laws of Florida) provides that '* * * Contributions shall accrue from the first day of the first period with respect to which contributions are required hereunder * * *'.

"Section 8 paragraph B requires contributions with respect to employers during the calendar year 1937 apparently indi-

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cating that it was the legislative intent to fix January 1, 1937 as the effective date when contributions first accrue; however, this paragraph suggests a possibility of an alternative date.

"In order to properly and effectively administer this law, it is essential that the date when contributions first accrue be officially established, as the date on which the benefits become payable (Section 4—Florida Unemployment Compensation Law) is dependent thereon."

Paragraph B, Section 8, provides for a tax of 1.8% with respect to employment during the calendar year 1937. In this same paragraph there is an alternative provision that if this provision should be held invalid then the employer should begin paying a tax dated from the first day of July, 1937, and double the amount which he would have had to pay had he started paying the first day of January, 1937.

The purpose of having this tax relate back to the first day of January was to give the State 90% credit on the amount which was paid to the Federal Government, for, as you know, this law did not go into effect until the first day of July, 1937; so in order to get credit with the Federal Government it was deemed advisable to have the taxes first accrue the first day of January, 1937. Since a question arose as to whether or not a tax could be retro-active it was deemed advisable to place a provision in the Act that if the Court should hold that you could not go back to the first day of January, 1937, and collect this tax that the tax should be doubled for the second half of the year.

It is therefore my opinion in answer to the question in your letter that the first day of January, 1937, is the day that contributions first accrue.

October 7, 1937.

**FLORIDA UNEMPLOYMENT COMPENSATION LAW—COMPUTATION
OF INTEREST CHARGE ON UNPAID CONTRIBUTIONS**

Dear Sir:

You request my opinion as to the validity of proposed regulation No. 5 to be promulgated under authority of Section 15, Paragraph (A) of the Florida Unemployment Compensation Law. Regulation No. 5 reads as follows:

"Interest prescribed by Law on over-due contributions shall accrue from the day following the due date of any contribution payments up to and including the day payment was made, as shown by the date of the postmark thereon, if mailed. Interest shall be computed at the rate of one per centum for each full

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month and for each period of less than one full month at the rate of one-thirtieth of one per centum for each day or fraction thereof."

It is my opinion that such a regulation would be valid.

October 28, 1938.

FLORIDA UNEMPLOYMENT COMPENSATION LAW—EMPLOYMENT SERVICE—INDEBTEDNESS

Dear Sirs:

Some time ago my opinion was requested as to the authority of the State of Florida to enter into an agreement with the United States Employment Service whereby each party would pay one-half of the expenses incurred by the Florida State Employment Service during the months of July, August, September and October of 1937. I replied that sufficient information was not at hand to enable me to render an opinion, and I requested that more detailed information be given. On October 27th your office furnished me with a list of the claims against the Florida State Employment Service, and also a copy of affiliation agreement between the Florida State Employment Service and United States Employment Service, for the fiscal year beginning July 1, 1936, with amendment thereto.

The Legislature of 1935, in anticipation of the passage by Congress of the Social Security Act, enacted Chapter 17270, creating a Florida Employment Board and authorizing it to establish and maintain free public employment offices throughout this State. It also accepted the provisions of the Wagner-Peyser Act (48 Stat. 113) and authorized the Board to employ a director and employees in accordance with regulations prescribed by the Director of the United States Employment Service.

A director and employees were appointed under the Act and under the provisions of the affiliation agreement previously referred to. This agreement consisted of a plan submitted by the State Employment Board, and the approval of that plan by the United States Employment Service. This plan for the operation of the Florida State Employment Service for the period from July 1, 1936, to June 30, 1937, sets forth the manner in which personnel are to be selected, and the general method by which the activities of the service will be carried on, the method by which the financial affairs of the service will be conducted, and other detailed information concerning the operation of this enterprise, during the time specified therein.

On June 9, 1937, twenty-one days prior to the date of the termination of the fiscal year for which the affiliation agreement was effective, the Florida Unemployment Compensation Law (Chapter 18402) went into effect. Section 13 of this Act established the Florida State Employment

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Service as a division of the Industrial Commission. This section set forth the purposes of the division, which were virtually identical with the purposes of Chapter 17270, namely, the establishment and maintenance of free public employment offices in cooperation with the Federal Government, under the provisions of the Wagner-Peyser Act. This section also provides that the employees of the Florida State Employment Service shall be appointed by the Florida Industrial Commission, and Section 11 of the same law provides that the Director of the Florida State Employment Service shall be appointed by the Governor. Under the former law, both the director and employees were appointed by the State Employment Board.

Section 22 of the Act provided that Chapter 17270, Acts of 1935, should be repealed on and after July 1, 1938. In view of these provisions, there appears to be some uncertainty as to the governmental body legally responsible for supervision and control of the functions of the Florida State Employment Service during the period between June 9th, the effective date of the Unemployment Compensation Law, and July 1st, the date that the Employment Board established under Chapter 17270, went out of existence. However, on June 29, 1937, the Florida Industrial Commission, acting through its chairman, signed an amendment to the previously mentioned affiliation agreement. The effective date of the amendment was June 9, 1937, the date the Unemployment Compensation Act went into effect, and by the amendment the Florida Industrial Commission adopted the previous agreement executed by the Florida Employment Board and the National Employment Service, and amended that agreement in certain respects. A part of the agreement so adopted by the Florida Industrial Commission provides as follows:

"Appointees to the service shall hold service on meritorious performance and will not be removed except for cause of insufficiency, incompetence, insubordination, indolence, malfeasance or other unfitness to render effective service."

On and after June 9, 1937, the Florida Industrial Commission was authorized to appoint employees of the Florida State Employment Service created by Chapter 18402, Acts of 1937. On that date there were persons employed under a previous Act of the Legislature providing for an Employment Service, which Act, although repealed, had not yet gone out of existence. The Industrial Commission's action in adopting the plan under which these persons were originally employed was, in my opinion, equivalent to an employment of these persons by the Florida Industrial Commission, under the powers granted that Commission by Section 13 of Chapter 18402, Acts of 1937. Unless on or subsequent to July 1st, the Florida Industrial Commission took some affirmative action to terminate such employment, it is my opinion that such employment continued until the employees stopped working, and that they are entitled to be paid their salaries and expenses during that period. The

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same is true of any expenses for goods or services rendered during that period to the Florida Employment Service by private individuals, for rent, telephone, telegraph, supplies, etc.

What has been said concerning the employees of the Florida State Employment Service is not applicable to the Director. Under the 1935 Act, the Director was appointed by the Board, while under the 1937 Act, the sole power to appoint the Director is vested in the Governor. On or about July 1st the Governor appointed a different individual as Director than the person who had been appointed Director by the Board under the 1935 Act. The Governor's action in appointing a new Director, was ample notice to the previous Director that he had not been appointed Director under the 1937 Act. Hence any claims by him for services performed subsequent to July 1, 1937, cannot be paid by the State.

Section 13 of the Florida Unemployment Compensation Law authorizes the Florida Industrial Commission to do all things necessary to secure to this State the benefits of the Wagner-Peyser Act, and hence it is my opinion that that Commission is legally authorized to enter into an agreement with the National Employment Service for the payment of such claims against the State Employment Service as come within the purview of this opinion.

I have not undertaken to investigate or pass upon individually the claims listed in the statement you furnished me on October 27th.

October 11, 1938.

FLORIDA UNEMPLOYMENT COMPENSATION LAW—LEASE OF CORPORATION PROPERTY AND BUSINESS TO INDIVIDUAL OWNING CORPORATION

Dear Sirs:

From your letter of August 31, 1938, it appears that A corporation is an employer, for the year 1938, under the provisions of the Florida Unemployment Compensation Law, and that on April 1, 1938, A corporation leased its property and business to B, an individual who owns and controls A corporation, and is the president thereof. It further appears that B claims exemption from the provisions of the aforementioned Act on the ground that he employs less than eight workers.

You have requested my opinion as to whether or not the provisions of Section 3GIV of the Florida Unemployment Compensation Act are applicable to this factual situation.

Section 3GIV reads in part as follows:

“‘Employer’ means: An employing unit which * * * owns or controls one or more other employing units (by legal and

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forcible means or otherwise), and which, if treated as a single unit with such employing units or interests, or both, would be an employer under paragraph 1 of this sub-section."

I am of the opinion that Section 3GIV is applicable to the factual situation presented, and that pursuant to the provisions of that section, the employees of employing unit A and employing unit B may be combined, in order to determine whether or not B is an employer within the meaning of the Unemployment Compensation Act.

March 14, 1938.

FLORIDA UNEMPLOYMENT COMPENSATION LAW — LIABILITY
OF THE SUCCESSOR IN INTEREST—WHEN SUBSTANTIALLY
ALL THE ASSETS OF PREDECESSOR ARE ACQUIRED PRIOR
TO JUNE 9, 1937, EFFECTIVE DATE OF THE
FLORIDA STATUTE

Dear Sir:

I acknowledge receipt of your letter of recent date, in which you state:

"Chapter 18,402, Acts of 1937, Laws of Florida, became effective June 9, 1937.

"Section G: 'Employer' means:

"I. 'Any employing unit which for some portion of a day, but not necessarily simultaneously, in each of twenty different weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year, has or had in employment eight or more individuals (irrespective of whether the same individuals are or were employed in each such day);

"II. 'An individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this Act;'

"On December 31, 1936 B, an individual, acquired substantially all the assets of A, a corporation. During the year 1937 A did not employ a sufficient number of workers to be liable for contributions under the Act. He was classified as liable, however, as a 'successor in interest' because his predecessor in interest had eight or more workers in employment for the requisite period during the calendar year 1936. B's contribution to the Fund has been received, but before finally accepting payment from him the point has been raised that under a liberal, fair

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and reasonable construction of the statute, perhaps A never was liable legally for the reason that it was not in existence at the time the Florida Act became effective; that in order for A to be liable it must have been an equity on or subsequent to June 9, 1937; that when the Act became effective, so far as A and B are concerned, B was the only employing unit that could be affected legally; and that B could not properly be designated a 'successor in interest,' consequently he is not liable for contributions to the State Unemployment Fund.

"The Unemployment Compensation Division is of the opinion that no liberal construction of the provisions of the Florida Unemployment Compensation Law could possibly embrace employing units that ceased to exist prior to the statute's effective date—June 9, 1937; that in order to transfer the liability of a predecessor in interest the time of acquisition must be on or subsequent to June 9, 1937.

"It is respectfully requested that you officially advise this Commission in the premises."

I agree with the construction placed by your Department under the facts stated above. It is clear that the A corporation was not subject to the Act at the time its assets were acquired by B.

July 15, 1938.

**FLORIDA UNEMPLOYMENT COMPENSATION LAW—PARTNERSHIP
—STATUS UNDER SECTION 3-G**

Dear Sir:

I have your letter of July 8th wherein you state that Section 3 G IV of the Florida Unemployment Compensation Law provides:

"An employing unit which, together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing units or interests, or both, would be an employer."

And that the following situations has been presented with the request that the status of the three units be determined under the foregoing section of the Florida Unemployment Compensation Law:

"A and B who are brothers each own 50% of the stock in Z Company, Inc. A and B each own one-third interest in W an unincorporated company. A and B each own one-third in-

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terest in X, a partnership composed of three partners, each owning a one-third interest. Should the workers employed by these three units be combined when ascertaining liability under the Florida statute because the same interests own or control each of the three units?"

You ask for my opinion thereupon.

The test seems to be under the above quoted section: Do the same interests either own or control the other employing units? There is no doubt that in the first situation you mention, A and B do own Z company, Inc.

You state in the next situation that this is an unincorporated company, which, of course, can only mean under our law that it is a partnership. This presents some difficulty because each partner has an equal voice in the management and control of the concern. However, in the event of a dispute, I find the rule to be as stated in 47 C. J., Partnership, Paragraph 226:

"In the event of difference of opinion between the partners as to the management or conduct of the partnership business, the majority governs."

So, as a practical matter, the majority would control the business of the partnership and, therefore, A and B while not the owners would be in control of this company.

The next proposition you mention is also a partnership and would likewise be governed by the above rule.

I, therefore, am of the opinion that since A and B own or control all three companies, they are the real employers, and, for the purpose of the Unemployment Compensation Act, the three companies should be considered as one employing unit and are, therefore, within the terms of the Act.

This seems to be the only practical construction that can be placed upon the above section and would certainly eliminate any attempts to evade the law by having several different companies that are all owned by the same interests.

September 9, 1938.

**PROCEDURE IN APPROVING ADMINISTRATIVE EXPENDITURES
OF UNEMPLOYMENT COMPENSATION DIVISION**

Dear Sirs:

Your letter of August 30, 1938, requests my opinion as to whether or not the Florida Industrial Commission can legally authorize the

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Director of the Unemployment Compensation Division to act as its agent for the purpose of approving vouchers for administrative expenses of such Division.

Section 14A of Chapter 18402, Laws of Florida, Acts of 1937 (Unemployment Compensation Act) reads in part as follows:

"All payments from the Unemployment Compensation Administration Fund shall be approved by the Commission *or by a duly authorized agent*, and shall be made by the Treasurer upon warrants issued by the Comptroller and countersigned by the Governor." (Italics supplied).

I am, therefore, of the opinion that your inquiry should be answered in the affirmative.

This is not to be construed to be in conflict with my opinion of July 11, 1938, referred to in your letter, for the Workmen's Compensation Act states that the Industrial Commission itself must approve all expenditures under that Act. The Unemployment Compensation Act, on the other hand, provides for the alternative quoted above.

November 26, 1937.

**FLORIDA UNEMPLOYMENT COMPENSATION LAW—STATUS OF
LIFE INSURANCE SOLICITING AGENTS REMUNERATED
SOLELY ON COMMISSION BASIS.**

Dear Sir:

I acknowledge receipt of your letter of November 17, in which you inquire whether or not a life insurance agents who is paid solely on commission basis is an independent contractor and not an employee under the terms and provisions of the Florida Unemployment Compensation Law, said Act being Chapter 18402, Laws of Florida, Acts of 1937.

You state in your letter:

"Pursuant to the provisions of Section 3 VI (i) of the Florida Unemployment Compensation Law, it has been the policy of the Unemployment Compensation Division to give considerable weight to the rulings of the Bureau of Internal Revenue in connection with the classifications under Title 9 of the Social Security Act."

I agree with the Division that this is a policy to be followed. It was the purpose in drafting the Unemployment Compensation Act and the intent of the Legislature in passing the said Act to tax only those employers who were taxed under the Federal Social Security Act in order that no additional taxes would be placed upon the employers of

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the State. In other words, to apply the law only where the Federal Government would give full credit on the taxes paid to the State on the payment of the Federal taxes.

The General Counsel of the Bureau of Internal Revenue has ruled that insurance agents are independent contractors and are not therefore employees subject to the provisions of the Social Security Act.

It is therefore my opinion under the facts set out in your letter of November 17 that life insurance soliciting agents remunerated solely on commission basis are independent contractors and not employees.

July 1, 1938.

**FLORIDA UNEMPLOYMENT LAW—SUPERVISOR OF EXAMINATIONS
INTERPRETATION OF RULE 1, SECTION 9 OF RULES
OF COMMISSION**

Dear Sir:

This is in reply to your letter of June 28, 1938, which reads as follows:

"Please consider at your very earliest convenience the attached regulations of the Florida Industrial Commission, and advise me of your interpretation of the meaning of Rule 1, Section 9, with reference to the employment of the 'Supervisor of Examinations.'

"Please note that this rule states that this office is filled by the Advisory Committee on personnel and *with the consent of the Commission.*

"Please consider this rule in connection with Rule 3, Section 1, and let me know if this means that whoever is selected by the Personnel Advisory Committee as Supervisor of Examinations must be approved by the Industrial Commission."

The regulation you enclosed (Regulation No. 6) provides in part as follows:

"**RULE II.** In order to assure an efficient and economical administration of the functions of unemployment compensation and to provide equal opportunity for all qualified persons to compete for positions in the Unemployment Competition Division, the Florida Industrial Commission has adopted the merit principle of personnel administration as provided for in Section 12d of the Florida Unemployment Compensation Law. All appointments shall be made on a non partisan merit basis and positions shall be filled from registers of eligibles established by merit examina-

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tions for each class of position. Examinations shall be conducted according to the provisions of these regulations and shall apply to all positions in the classified service."

"**RULE III. Sec. 1. ADVISORY COMMITTEE ON PERSONNEL.** In order to assure that the merit principle in government service as set forth in these regulations shall be applied impartially, with freedom from political influence and with justice to all citizens of the State of Florida, the Commission shall appoint an Advisory Committee on Personnel."

"**RULE I. Sec. 9.** The term 'Supervisor of Examinations' means the person whom the Advisory Committee on Personnel selects with the consent of the Commission to prepare, administer and score the examinations under the merit program, to maintain lists of eligibles and perform related duties."

"**RULE III. Sec. 1 (paragraph 1).**

"It shall be the duty of the Advisory Committee on Personnel (1) To appoint a Supervisor of Examinations and to advise with him in formulating procedures for the conduct of merit examinations, and to inspect and review the activities of the Supervisor of Examinations, with the purpose of securing conformity with the policies contained in these regulations."

"**RULE III. Sec. 2. SUPERVISOR OF MERIT EXAMINATIONS.** The Supervisor of Examinations shall be a person of station, have known sympathies with the merit principle in government service and shall possess such other qualifications hereinafter defined. The Supervisor shall not have served at any time as an employee of the Commission and shall not hold office in any political party."

The power to appoint a Supervisor of Merit Examinations rests upon the Advisory Committee on Personnel. That committee must exercise that power by appointing a man having the qualifications set forth in Rule III. If such a man is appointed, I am of the opinion that the Commission must consent to the appointment. I am also of the opinion that the Commission may not withhold its consent to the appointment made by the Committee, unless such non-consent is reasonably exercised, and predicated upon some dereliction in statutory, regulatory, or other qualification of the person selected.

State, ex rel. Pittman, et al. vs. Barker, et al., 152 So. 682;

State, ex rel. Waldron, et al. vs. Wilkinson, et al., 158 So. 703.

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July 11, 1938.

WORKMEN'S COMPENSATION ACT—COMMISSION MUST DETERMINE EXPENDITURE TO BE INCURRED

Dear Sir:

This will acknowledge receipt of your letter of July 8th wherein you request my opinion upon the following questions:

Does the Florida Industrial Commission have authority to adopt the following motion?

"* * * that all bills to be submitted to the Comptroller for payment shall be authorized only when first approved by the Director of a Division, then by the Chairman of the Commission who is hereby authorized to take such action for the Commission."

In my opinion, this question must be answered in the negative. This is in line with the previous opinions of this Office and the case of *State vs. Apalachicola Northern R. Co.*, 88 So. 310. The Court held in that case:

"An administrative board cannot legally confer upon its employees authority that under the law may be exercised only by the board. * * *"

Under the Workmen's Compensation Act that you have referred to, Section 44, which creates this Commission, provides for its duties and powers and authorizes it to make certain expenditures and then provides:

"All expenditures of the Commission in the administration of this Act shall be allowed and paid as provided in Section 50 of this Act upon presentation of itemized vouchers therefor approved by the Commission."

I can find nothing in this Section that authorizes such action to be taken by one member of the Commission. Under this Act, the Commission and not the chairman must determine what expenditures are to be incurred and paid. In reaching this conclusion, I have fully taken into consideration the fact that Section 44-c authorizes the Commission to make necessary rules and regulations for the administration of this Act. This same provision was mentioned in the case above cited, where the Court said:

"It will be noted that the State Plant Board is given authority by this statute to 'make rules and regulations for carrying out the provisions and requirements of this Act,' and the employees of the Board are given authority 'to carry out and execute the regulations and orders of the board.'"

"If this statute should be construed as an attempt to give the State Plant Board power to confer upon its employees of-

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official authority, or authority other than that of employees whose duty it is to carry out and execute the valid rules and orders of the board, it would be in conflict with organic law. The statute cannot authorize the board to appoint an officer or to confer official authority upon its employees. Section 27, article 3, Constitution of Florida."

The last question that you have propounded is: Can the Commission authorize the Chairman to act for the Commission on everything coming between each meeting?

In answering the first question, I have answered the latter question, which, of course, is in the negative.

September 14, 1937.

**WORKMEN'S COMPENSATION ACT—COMPENSATION ONLY FOR
REMEDIAL TREATMENT UNDER DIRECTION AND SUPER-
VISION OF QUALIFIED PHYSICIAN OR SURGEON**

Dear Sir:

This is in reply to your letter of September 7th in which you state the following:

"On January 26, 1937, in answer to an inquiry from this office, you expressed the opinion that the ruling theretofore promulgated by the Commission in which the Commission took the position that chiropractors, osteopaths and naturopaths could not render treatment to injured employees except under the supervision of a qualified physician, was incorrect and not supported by the authorities. Your opinion has been respected.

The Legislature at the 1937 regular session amended the Florida Workmen's Compensation Act so that the section relating to medical service and supplies now reads as follows:

'Section 13 (a). The employer shall furnish such medical, surgical, and other attendance or remedial treatment under the direction and supervision of a qualified physician or surgeon, nurse and hospital service, medicine, crutches, artificial members, and apparatus for such period as the nature of the injury of the process of recovery may require * * *'

The question to be determined is what the Legislature intended by the words "qualified physician or surgeon." It is my opinion that such words were intended by the Legislature to apply to a doctor of medicine or surgery. See the case of *Corsten vs. State Industrial Commission*, decided by the Supreme Court of Wisconsin and reported in 240 Northwestern Reporter, page 834, and also the case of *Chastney vs. State*

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Board of Education, decided by the Supreme Court of New Jersey and reported in 145 Atlantic Reporter, page 730. I call your attention, however, to the following provisions of Section 3429 Compiled General Laws of Florida, 1927, relating to osteopathic physicians and surgeons:

"Osteopathic physicians and surgeons licensed hereunder shall have the same rights as physicians and surgeons of other schools of medicine with respect to the treatment of cases or holding of offices in public institutions."

It is therefore my opinion that only such remedial treatment as is administered under the direction and supervision of a doctor of medicine or surgery or an osteopathic physician or surgeon may be compensated under the provisions of amended Section 13 (a) of the Workmen's Compensation Act.

October 22, 1937.

WORKMEN'S COMPENSATION ACT—EFFECT OF AMENDMENT—
CHAPTER 18413, ACTS OF 1937

Dear Sirs:

This is in reply to your letter of October 21st which reads in part as follows:

"As you know, the 1937 Legislature amended Section 2 of the Workmen's Compensation Act, which section defines the word 'employment'. It is thought the amendment makes the Act ambiguous.

"The ambiguity arises on the question of whether the expression in the amendment, 'which is hereby defined as including turpentine, labor, labor in processing gum-spirits-or-turpentine, crude-gum, aleoresin and gum-rosin, labor engaged in logging, poles piling, and cross-tie operations, the production and distribution by producer of dairy products, and all labor employed in the production and handling of agricultural and horticultural products in their natural or fresh state and whether the same be engaged in picking, gathering, harvesting, processing, packing, canning, or handling thereof, or in the hauling of same from the grove or field to the packing house or cannery', applies to the word 'employment' or to the expression 'agricultural and horticultural farm labor'."

The portion of the Act above set forth is in that part of Section 2 (1) dealing with types of labor excluded from the operation of the Act. While the intent of the Legislature is not expressed as clearly as it might have been, it is my opinion that the statutory provisions above set forth were intended by the Legislature to define and explain the

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terms 'agricultural and horticultural farm labor' and not 'employment'. It would therefore follow that the provisions above set forth describe types of labor excluded from the operation of the Act.

December 7, 1938.

**WORKMEN'S COMPENSATION ACT—FLORIDA STATE HOSPITAL
AND FLORIDA STATE FARM**

Dear Sirs:

Under the provisions of Section 38, subsection (e) the Board of Commissioners of State Institutions, in operating the Florida State Hospital and Florida State Farm, is a self-insurer. Section 38 (e) of said Workmen's Compensation Act reads as follows:

"The State, its Boards, Bureaus, Departments and agencies and all its Political Subdivisions who employ labor shall be deemed self-insurers under the terms of this Act unless they elect to procure and maintain insurance to secure the benefits of this Act to their employees and they are hereby authorized to pay the premiums for the said insurance."

It has been proposed that the Board establish special funds for each of the institutions hereinabove referred to in an amount equal to the insurance premiums which would be payable for compensation insurance if the Board elected to contract for such insurance. All claims under the Workmen's Compensation Act would be payable from such funds.

It is my opinion that it is proper to provide for such funds. This is an administrative detail incident to the performance of statutory duties devolving upon the Board in connection with the Workmen's Compensation Act.

June 8, 1937.

WORKMEN'S COMPENSATION ACT—INDEPENDENT CONTRACTOR

Dear Sir:

This is in reply to your communication of May 29th enclosing a letter from the American Mutual Liability Insurance Company in regard to * * *. We quote portions of the letter from the insurance company:

"We have had some discussion with our insured relative to the inclusion of the payroll for employees on their premises engaged as box makers. According to our understanding, our insured contracts with a certain box maker on a definite contract basis for the assembling of the necessary crates in which citrus fruit is shipped, agreeing to pay this individual a lump

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sum for his work and he in turn goes out and employs as many men as he sees fit to do such work. This is a verbal contract and the insured can abrogate the contract with some notice for just cause. The work is carried on on the premises of our insured, but there is practically no control or supervision over the work, the insured apparently being interested only in the result. It is our understanding that none of the employees hired by this contractor are subject to the supervision of the risk.

* * *

It may be true that from the lack of supervision exercised on the part of our insured in the nature in which the work is conducted, that this box assembling contractor could be construed as an independent contractor, but where the work conducted is considered in a sense incidental or necessary to the operations carried on by our insured, could this not be looked at as an attempt to defeat the purposes of the compensation act, by attempting to contract out incidental or necessary operations to the general business conducted by our insured."

The following from *Words & Phrases*, Fourth Series, Volume 2, page 334, is a concise statement of the test of whether one is an employee or an independent contractor:

"The test of whether one is an employee or an independent contractor is not the fact of actual interference with the worker's control, but the right to interfere; an "independent contractor" being one who undertakes to produce a given result, but who, in the actual execution of the work, is not under orders or control of person for whom he does the work, being permitted to use his own discretion in things not specified. *Nelson Bros. & Co. vs. Industrial Commission*, 161 N. E. 113, 114, 330 Ill. 27."

It is my understanding that * * * is a fruit packing plant. It would be my opinion that making boxes in which the fruit is to be shipped is not in the course of the trade or business of * * * and, therefore, those engaged in the making of boxes under the direction of an independent contractor are not "employees" of * * * within the provisions of Section 2 (2) of the Workmen's Compensation Act. Granting the facts stated concerning the nature of the contract entered into between * * * and the box maker, the latter would be an independent contractor under the test hereinabove set forth.

I am not unduly concerned by the suggestion that an employer can divide up the operations of his business so as to have them performed by independent contractors and thus evade the provisions of the Workmen's Compensation Act. Each of the independent contractors, if employing three or more employees, would become employers under the Act and the employees would be entitled to all the benefits thereof.

FLORIDA INDUSTRIAL COMMISSION

July 27, 1937.

WORKMEN'S COMPENSATION ACT—INSURANCE AGENTS AND
CLAIM ADJUSTERS TAKING PART IN HEARINGS BEFORE
COMMISSIONERS AS CONSTITUTING UNAUTHORIZED
PRACTICE OF LAW*Dear Sir:*

This is in reply to your letter of February 17th in which you enclose correspondence dealing with a controversy which has arisen involving the practice of insurance agents actively taking part in hearings before Deputy Commissioners of the Industrial Commission. It would appear that such insurance agents and claim adjusters have examined witnesses, argued both the facts and law and generally taken part in such hearings to about the same extent and in much the same manner as attorneys at law. The question to be determined is whether such activity on the part of insurance agents constitutes unauthorized practice of law.

While the statutes of Florida do not set forth a definition of what constitutes the practice of law, Section 4189, Compiled Laws of Florida, 1927, enumerates some of the powers of attorneys and indirectly sheds some light on the question. Section 4189 reads as follows:

"Every attorney duly admitted or authorized to practice in this State shall have the right to appear before any court of the State, or *any public board, committee, or officer in the interest of any client*, and may appear as *amicus curae* when so permitted. All attorneys shall be deemed officers of the court for the administration of justice, and amenable to the rules and discipline of the court in all matters of order or procedure not in conflict with the Constitution or laws of this State. (Italics ours.)

In determining whether or not particular activities constitute engaging in the practice of law we are not necessarily restricted to provisions of the statutes that may have been enacted on the subject. It is generally recognized that the power to define what constitutes the practice of law is vested in the courts and not in the legislature. Some decisions have even gone so far as to hold that an attempt on the part of the legislative department of government to define the practice of law is an unwarranted encroachment on the authority belonging exclusively to the judiciary.

My attention has been called to the recent decision of the Supreme Court of Pennsylvania in the case of Edwin Shortz, Jr., et al. vs. Ambrose E. Farrell in which the precise question under consideration here was involved. The following is from the opinion of the Pennsylvania Court in that case:

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"In considering the scope of the practice of law mere nomenclature is unimportant, as, for example, whether or not the tribunal is called a 'court', or the controversy 'litigation.' Where the application of legal knowledge and technique is required, the activity constitutes such a practice even if conducted before a so-called administrative board or commission. It is the character of the act and not the place where it is performed which is the decisive factor.

Is, then, a participation in hearings before workmen's compensation referees the practice of law? It would seem clearly to be included within the third field or category of a lawyer's functions as above formulated. We are not unmindful that the Workmen's Compensation Board has been denominated 'an administrative tribunal, less formal than a court': *Johnston vs. Payne-Yost Construction Co.*, 292 Pa. 509, 514; and that established rules and principles of common law practice are not to be rigorously applied in its proceedings: *Gairt vs. Curry Coal Mining Co.*, 272 Pa. 494, 498; *Manley vs. Lycoming Motors Corporation*, 83 Pa. Superior Ct. 173, 174; *Ratto vs. Pennsylvania Coal Co.*, 102 Pa. Superior Ct. 242, 247; *Virtue vs. Plummer*, 111 Pa. Superior Ct. 476, 478, 479. But even in compensation cases the material findings must have a basis of legal proof on which to rest: *Johnston vs. Payne-Yost Construction Co.*, supra, pp. 514, 515. While neither the Board nor the referees are bound by technical rules of testimony, 'all findings of fact shall be based only upon competent evidences' Act of June 26, 1919, P. L. 642, section 6, amending section 422 of the Act of June 2, 1915, P. L. 736. Therefore, examination and cross-examination of witnesses require a knowledge of relevancy and materiality. * * * The application of the Workmen's Compensation Act frequently involves delicate problems of law and fact. The Board considers legal questions, applies legal rules, and weighs facts in the light of legal principles. It has power to issue subpoenas, administer oaths, and require the attendance of witnesses and the production of books and documents: Acts of July 21, 1919, P. L. 1077, section 20; June 26, 1919, P. L. 642, section 6 (Art. IV, sec. 418). The proceedings, though less technical, are conducted much as in court. They are essentially of a judicial character. Were they transferred to a court room and carried on before a judge, it would be readily perceived that they involve the same fundamental characteristics of the determination of property rights and obligations of parties as do other judicial proceedings. Indeed, in Alabama, Alaska, Louisiana, New Hampshire, New Mexico, Rhode Island, Tennessee, and Wyoming, controversies in compensation cases are adjudicated directly by the courts. It is argued that because the referees and member of the Board are not required by our Workmen's Compensation

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legislation to be learned in the law, the qualifications of those appearing on behalf of the parties should not be required to conform to a higher standard than those of the presiding officials, but in some measure the same contention would apply to the exclusive province of lawyers to argue cases before juries of laymen. The function of attorneys is to make sure that only proper evidence is admitted, and logically to marshal it for the consideration of the fact-finding tribunal. * * *

It is defendant's contention that one of the objects of the Workmen's Compensation system was to achieve such simplicity in proceedings and administration that legal aid would not be required by the parties. This may be true to some extent, (and indeed such purpose is largely accomplished by the provisions of the Workmen's Compensation Act regarding amicable agreements of the parties as to the compensation payable, which render expert legal assistance unnecessary in the overwhelming majority of industrial accidents), but there is nothing to indicate that it is true as to controversial proceedings conducted before the referees or the Board. Indeed, the Act of June 2, 1915, P. L. 736, section 501, makes provision for the approval by the Board of agreements for legal services rendered in support of claims for compensation. Defendant calls attention to the statement in *Johnson vs. Jeddo Highland Coal Company*, 99 Pa. Superior Ct. 94, 98, that 'It was contemplated (by the Workmen's Compensation Act) that the injured employee might act without the employment of an attorney,' and to the Act of March 21, 1806, P. L. 326, section 9, which provides 'That in all civil suits or proceedings in any court within this commonwealth, every suitor and party concerned, shall have a right to be heard, by himself and counsel, or either of them * * *'. Of course a claimant may, if he so desires, appear in workmen's compensation cases, as in all other judicial proceedings, without being represented by counsel. All that is here decided is that, if any person other than a member of the bar participates on behalf of another in hearings and proceedings before the Workmen's Compensation Board or one of the referees, such a representative is engaging in the practice of law and therefore comes under the ban of the Act of April 24, 1933, P. L. 66. In the case of a corporate party, such as the Globe Indemnity Company by whom defendant is employed, there can be no legal representation at all except by counsel, because a corporation cannot appear in propria persona: 1 *Coke Litt.* 66 b; *Bennie vs. Triange Ranch Co.*, 73 Colo. 586; *Mullin-Johnson Co. vs. Penn Mutual Life Ins. Co.*, 9 Fed. Supp. 175; *New Jersey Photo Engraving Co. vs. Schonert*, 95 N. J. Eq. 12, 122 Atl. 307; *Black & White Operating Co. vs. Grosbart*, 107 N. J. L. 63, 151 Atl. 630; *Nixon, Ellison & Co. vs. Southwestern Insurance Co.*, 47

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Ill. 444; *Nispel vs. Western Union R. R. Co.*, 64 Ill. 311; *Cary vs. Satterlee*, 166 Minn. 507, 208 N. W. 408. Were it otherwise, a corporation could employ any person, not learned in the law, to represent it in any or all judicial proceedings. Since defendant's activities before the compensation referees constituted the practice of law, it is immaterial that they were conducted on behalf of a corporation by which he was regularly employed.

The few reported decisions on the question whether participation in hearings before Workmen's Compensation Boards or similar bodies constitutes the practice of law are uniformly in accord with the view here adopted: *Michigan State Bar Association vs. McGregor*, 14 Mich. S. B. J. 145; *State Bar of Oklahoma vs. Waldron*, District Court of Tulsa County, Okla., No. 60630; *Goodman vs. Beall*, 130 Ohio St. 427, 200 N. E. 470; *People ex rel. Chicago Bar Association vs. Goodman*, Supreme Court of Illinois, Docket No. 23052, opinion filed Feb. 18, 1937; *Clark vs. Austin*, 101 S. W. (2d) 977 (Mo.).

I am fully in accord with the principles stated in the case of *Shortz vs. Farrell* (supra). It is my opinion that insurance agents and claim adjusters engaging in the activities described in the first paragraph of this opinion are "practicing law." This they have no right to do unless they are admitted to the practice of law in the State.

In stating this opinion I have not overlooked Section 25 (D) of the Florida Workmen's Compensation Act, which reads as follows:

"As such hearing the claimant and the employer may each present evidence in respect of such claim and may be represented by any person authorized in writing for such purpose."

This provision must be construed in the light of well established principles of law as well as existing statutes. With this in mind it is my opinion that the person who is authorized in writing to represent the claimant or employer must be an attorney. I again quote an interesting portion from the opinion of the Supreme Court of Pennsylvania in the case of *Shortz vs. Farrell*:

"While, in order to acquire the education necessary to gain admission to the bar and thereby become eligible to practice law, one is obliged to 'scorn delights, and live laborous days,' the object of the legislation forbidding practice to laymen is not to secure to lawyers a monopoly, however deserved, but, by preventing the intrusion of inexpert and unlearned persons in the practice of law, to assure to the public adequate protection in the pursuit of justice, than which society knows no loftier aim. There is also another consideration to which it may not be amiss to refer. There has been such an enormous development in recent years of administrative and quasi-judicial

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boards of all kinds, that, unless their proceedings and decisions are guided by persons learned in the history, development and philosophy of legal principles, the decline may be very rapid from government characterized by supremacy of law to one of haphazard and arbitrary rule,—a degeneration from liberty to oppression."

This opinion is not to be construed, however, as denying laymen the right to prepare and file pleadings in Workmen's Compensation cases. Such pleadings are usually on printed forms and little legal skill is required in their preparation. By far the great majority of matters handled by the Industrial Commission under the Workmen's Compensation Act are not contested. It is only when a hearing is begun before a referee that the representative of a party would be considered as engaging in the practice of law.

December 18, 1937.

**WORKMEN'S COMPENSATION ACT—JANITORS AND MANAGERS OF
APARTMENT BUILDINGS, EMPLOYEES OF OWNERS
AND NOT RENTAL AGENTS**

Dear Sir:

This is in reply to your letter of November 30. You enclose copy of a letter from * * * the first paragraph of which reads as follows:

"We are confronted with a situation in Florida involving a question of whether or not the managers and other employees engaged in the care and maintenance of buildings would be considered as employees of the rental agent handling these properties. The rental agent in this case is the Keyes Company of Miami, Florida. We understand that the Keyes Company pays these employees and retains the monies paid to them from the amount of rent they turn over to the various property owners. We carry the Workmen's Compensation insurance of the Keyes Company. Our assured desires complete protection but do not wish to obligate themselves for Workmen's Compensation or to have included in the payroll of our policy any employees that would not be considered as employees of their own. We understand that in addition to handling the salary payments as outlined above, the Keyes Company actually hires these individuals."

You request my opinion as to whether managers and other employees engaged in the care and maintenance of buildings are to be considered as employees of the rental agent or the owner. It is my opinion that they are to be considered the employees of the owner of the building and not of the rental agent. The rental agent is simply the agent of the owner and acts for the owner in engaging the services of such employees.

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The following is from *Workmen's Compensation Law*, by Schneider, Vol. 1, Second Edition, page 204:

"The agent who with authority express or implied, employs help for the benefit of his principal's business, thereby creates the relation of employer and employee between such help and his principal."

November 29, 1938.

**WORKMEN'S COMPENSATION ACT—LIABILITY OF COUNTY
SCHOOL BOARDS, BOARDS OF COUNTY COMMISSION-
ERS AND MUNICIPALITIES TO PAY ASSESSMENT
UNDER SECTION 51 AS "SELF-INSURERS"**

Dear Sirs:

This is in reply to your joint request for my opinion concerning the liability of County Boards of Public Instruction, Boards of County Commissioners, municipalities and other political subdivisions for payment of the assessment provided in Section 51 of the Florida Workmen's Compensation Act as self-insurers thereunder. While you specifically propound four separate questions the first three may be disposed of by determining the fundamental, underlying question concerning the liability of such political boards and subdivisions for payment of the assessments to which reference is hereinabove made.

Section 51 of the Florida Workmen's Compensation Act prescribes the method for estimating semi-annually in advance amounts necessary for the administration of said Act. Subsection (2) of said Section 51 which provides for raising the necessary funds to pay the expenses of administration, reads as follows:

"The total expenses of administration shall be prorated among the insurance companies writing compensation insurance in the State, and self-insurers. The gross earned premiums of the companies and the amount of premiums a self-insurer would have to pay if insured are the basis for computing the amount to be assessed. This amount may be assessed as a specific amount or as a percentage of gross earned premiums payable as the Commission may direct, provided, however, such amount so assessed shall not exceed two per centum of such gross earned premiums."

It is my opinion that assessments made under the statutory provisions above set forth constitute a "tax" as that term is generally understood. The following definitions of a tax are set forth in the opinion of the Supreme Court of Florida in the case of *Flood vs. State*, 117 So. 385, text page 386:

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"A tax as defined by Webster's New International Dictionary, is:

"A charge, a pecuniary burden imposed by authority; specific, a charge or burden usually pecuniary relating to persons or property for public purposes; a forced contribution of wealth to meet the public need of the government. A sum imposed or levied upon the members of society to defray its expenses; to exact money for the support of government."

(2) A tax is defined in American & English Encyclopedia of Law, 578, as: 'Burdens or charges imposed by legislative authority on persons or property to raise money for public purposes.'

This view is supported by the following provisions of subsection (e) of Section 51 of the Florida Workmen's Compensation Act:

"Any amount so assessed against and paid by insurance carrier shall be allowed as a deduction against the amount of *any other tax levied* by the State of Florida upon the premiums, assessments or deposits for Workmen's Compensation Insurance on contracts or policies of said insurance carrier." (Italics ours.)

The assessment under consideration is not a "fee" as that term is generally understood because it is not a charge for special services. A self-insurer may be liable for payment of such assessments even though he may have had little or no dealing with the division of the Florida Industrial Commission which administers the Workmen's Compensation Act. See also the discussion of the nature of taxation set forth in the opinion of the Supreme Court of Florida in the case of Kathleen Citrus Land Company vs. City of Lakeland, 169 So. 356, text page 358.

Having reached the conclusion that such an assessment is a tax, it necessarily follows that the Florida Workmen's Compensation must be so construed as not to require payment of such tax by County Boards of Public Instruction and Boards of County Commissioners insofar as their strictly governmental activities are concerned. Counties are political subdivisions of the State created for administrative purposes. See *Keggin vs. Hillsborough County*, 71 So. 372, *Amos vs. Matthews*, 126 So. 308 and *Whitney vs. Hillsborough County*, 127 So. 486. The same may be said concerning County Boards of Public Instruction and municipal corporations. Subdivisions of the State are not subject to excise taxes for the privilege of exercising their governmental as distinguished from proprietary functions. The following is from the opinion of the Supreme Court of Florida in the case of *City of Lakeland vs. Amos*, 143 So. 744, text page 747:

"While the organic law intends that the governmental functions and property of municipalities shall not be taxed, the Con-

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stitution does not exempt the authorized corporate business occupations or proprietary activities of municipal corporations from taxation. The Constitution exempts from taxation not municipal corporations, but property that is held and used exclusively for municipal purposes. Section 16, article 16. See *City of West Palm Beach vs. Amos*, 100 Fla. 891, 130 So. 710."

When a political subdivision of the State is engaged in proprietary activities, such as operating electric plants, etc., it has the same status insofar as such proprietary activities are concerned as a private employer engaging in the same business. It would be liable for payment of such assessments to the extent that it engages in such proprietary activities but not, however, in carrying on its purely governmental functions.

Answering your fourth question, it is my opinion that municipalities come within the provisions of Section 39 (e) of the Florida Workmen's Compensation Act. This conclusion finds support in the definition of "employer" set forth in Section 2 of the Act as amended by Section 1 of Chapter 18413, Laws of Florida, Acts of 1937.

September 4, 1938.

PERIODICAL—PRINTING AND CIRCULATION AUTHORIZED

Dear Sir:

Replying to your letter of September 1st in which you request my opinion as to whether or not the expense of printing and circularizing a periodical devoted to the stimulation of interest in and the dissemination of information of an educational nature regarding industrial safety would be a proper charge against the fund established by Section 50 of the Act of 1935 Legislature creating the Industrial Commission when duly approved by the Commission.

I wish to advise that Section 46 (a) of said Act provides:

"The Commission shall make studies and investigations with respect to safety provisions and the causes of injuries in employments covered by this Act, and shall from time to time make to the Legislature and employers and carriers such recommendations as it may deem proper as to the best means of preventing injuries. * * *

This provision in said Act certainly makes it the duty of the Commission to publish in some form for the benefit of the Legislature, employers and carriers the results of its investigations and studies with respect to industrial safety. Otherwise this Section of the Act would be meaningless and the above quoted provision when read in connection with Section 44 (c): "* * * to make such expenditures (including ex-

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penditures for personal services and rent at the seat of government and elsewhere, for law books, books of reference, periodicals, office equipment and supplies, and for printing and binding) as may be necessary in the administration of this Act" would in my opinion authorize the printing and circulation of such information either in bulletin or periodical form in order to carry into effect the purposes of Section 46 (a) of said Act. It necessarily follows that the expense connected therewith would be a proper charge against the fund established by Section 50 of the Act when done in accordance therewith.

January 26, 1937.

WORKMEN'S COMPENSATION ACT—RULING OF COMMISSION
NOT SUPPORTED BY THIS ACT

Dear Sirs:

This is in reply to your request for my opinion concerning the validity of the ruling promulgated by the Commission which is set forth on page 29 and 30 of the report published under the title, "The Florida Workmen's Compensation Act."

Section 13 (a) of the Workmen's Compensation Act, which prescribes the duty of the employer concerning the furnishing of medical service and supplies, reads as follows:

The employer shall furnish medical, surgical and *other attendance or remedial treatment*, nursing and hospital service, medicine, crutches, and apparatus for such period as the nature of the injury or the process of recovery may require. If the employer fails to provide the same, after request by the injured employee, such injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services, unless he shall have requested the employer to furnish the same and the employer shall have failed or refused or neglected to do so, or unless the nature of the injury required such treatment, nursing and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide the same; nor shall any claim for medical or surgical or *other remedial treatment* be valid and enforceable as against such employer, unless within twenty days following the first treatment the physician or practitioner giving such treatment furnish to the employer and the Commission a report of such injury and treatment on a form prescribed by the Commission." (Italics ours.)

The words which I have italicized in the statutory provisions above set forth clearly indicate that the Legislature did not intend to pre-

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scribe any definite method of treatment to the exclusion of all others. The Legislature did, however, provide the proper safeguard. Section 13 (b) reads as follows:

"The Industrial Commission may at any time, for good cause shown it, in its discretion order a change in such medical remedial attention."

Section 25 (g) of the Workmen's Compensation Act reads as follows:

"An injured employee claiming or entitled to compensation shall submit to such physical examination (but after examination no person having contrary religious belief shall be required to take medical or surgical treatment) by a duly qualified physician designated or approved by the Commission as the Commission may require. The place or places shall be reasonably convenient for the employee. Such physician or physicians as the employee, employer or carrier may select and pay for may participate in an examination if the employee, employer or carrier so requests. Proceedings shall be suspended and no compensation be payable for any period during which the employee may refuse to submit to examination."

It is clear that Section 25 (g), above set forth, applies only to a physical examination to determine the extent of the disability and does not apply in any way to the type of treatment to be given an injured person. The Industrial Commission does have the right to designate the physician to make this examination. The purpose of this statutory provision is to eliminate false and fraudulent claims and to determine the extent and nature of the injuries. This statutory provision is, therefore, entirely separate and apart from Section 13 (a) above set forth.

It is, therefore, my opinion that the ruling of the Industrial Commission concerning which you inquired is not supported by the provisions of the Workmen's Compensation Act and is invalid.

May 25, 1938.

**WORKMEN'S COMPENSATION ACT—SCHOOL BUS OPERATORS AS
INDEPENDENT CONTRACTORS NOT UNDER CERTAIN
FORM OF TRANSPORTATION CONTRACT**

Dear Sir:

This is in reply to your letter of May 20th, enclosing * * * a blank form of transportation contract used by the Duval County Board of Public Instruction.

You request my opinion as to whether this particular form of contract constitutes the bus contractor or the drivers employed by him

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employees of the Board of Public Instruction or whether such bus contractor is an independent contractor.

The Supreme Court of Florida in the case of Gulf Refining Company vs. Wilkinson, 114 So. 503, quoted with approval the following definition of an independent contractor:

"One who contracts with another to do a specific piece of work for him, and who furnishes and has the absolute control of his assistants, and who executes the work entirely in accord with his own ideas, or *with a plan previously given him by the person for whom the work is done*, without being subject to the latter's orders in respect to the details of the work, with absolute control thereof, is not a servant of his employer, but is an independent contractor." 18 R. C. L. 492." (Italics ours.)

I call your attention to the case of Arthur vs. Marble Rock Consolidated School District, decided by the Supreme Court of Iowa and reported in 228 N. W. 70 and 66 A. L. R. 718. I also call your attention to the annotation in 66 A. L. R. 724.

It is my opinion under the terms of the particular contract, under consideration the bus contractors and the drivers employed by them are not to be classified as employees of the Board of Public Instruction for the bus contractors are independent contractors. See Section 2 (2) of Chapter 17481, Acts of 1935 as amended by Chapter 18413, Acts of 1937. The provisions of the proposed contract which appear to give the school board a great measure of control over the operation of the school busses are, in the last analysis, the plan prescribed in advance by the school board for the operation of the busses and fit the above definition of an independent contractor.

May 5, 1938.

WORKMEN'S COMPENSATION ACT—SCHOOL BUS OWNERS AS
INDEPENDENT CONTRACTS NOT WITHIN
PROVISIONS OF ACT

Dear Sir:

This is in reply to your letter of May 2nd in which you enclose a sample transportation contract of the type entered into by the Board of Public Instruction of Seminole County with operators of school busses. You request my opinion as to whether persons entering into such transportation contracts should be considered employees of the Board of Public Instruction within the provisions of the Workmen's Compensation Act.

In view of the fact that the transportation contract contemplates that the contractor agrees to provide the school busses and operators

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of same without direct supervision from the Board, it is my opinion that such transportation contractors would be independent contractors under the provisions of Section 2, Chapter 17481, Acts of 1935 as amended by Chapter 18413, Acts of 1937. They would not therefore be considered employees of the Board.

March 17, 1938.

WORKMEN'S COMPENSATION ACT—THE STATE AND ITS SUBDIVISIONS MAY NOT REJECT THE ACT—CHAPTER 17481,
ACTS OF 1935 AS AMENDED BY CHAPTER 18413,
ACTS OF 1937

Dear Sir:

You request my opinion as to whether or not the State and its political subdivisions may reject the Workmen's Compensation Act under the provisions of Sections 5 and 6 thereof. If this were permissible such rejection might well be construed to relieve the State and its political subdivisions of any liability resulting from the injury or death of employees in the course of their employment, for it would seem that Section 19 of Chapter 18413 is limited to actions brought for the purpose of enforcing compensation awards made pursuant to the act. If the State and its subdivisions were authorized to reject the act they would be able to defeat actions brought for damages resulting from injuries to and death of employees by reason of their constitutional immunity from suit.

It would seem to me, however, that the Legislature clearly intended that employees of the State and its subdivisions should enjoy the benefits accruing from the Workmen's Compensation Act. This intent is evidenced in Section 2 of the Act where the terms "employment" and "employer" are so defined as to include such public employees. This intention is also evidenced in Section 38 (e) of the act and in Section 19 of Chapter 14813, Laws of Florida, Acts of 1937.

The provisions of Section 38 (e) are as follows:

"The State, its Boards, Bureaus, Departments and agencies and all its Political subdivisions who employ labor shall be deemed self-insurers under the terms of this Act unless they elect to procure and maintain insurance to secure the benefits of this Act to their employees and they are hereby authorized to pay the premiums for the said insurance." (Italics ours).

Section 38(e) may be construed in either of two ways. One construction is that it is limited simply to authorizing the State and its political subdivisions to maintain insurance at their option or to be self-insurers under the act. It may also be construed to mean that the Legislature has made a definite election on the part of the State

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and its political subdivisions to accept the Workmen's Compensation Act, leaving it to the State and the particular political subdivision to determine whether it will obtain insurance covering its liability. I believe that this latter construction is consistent with the general intent of the Legislature expressed in the act.

It is therefore my opinion that the Legislature in Section 38(e) has made the election on behalf of the State and its subdivisions to accept the Workmen's Compensation Act and that they may not reject same.

SECTION 17

FLORIDA STATE HOSPITAL

September 2, 1937.

PAYMENT OF WITNESS FEES TO EMPLOYEES

Dear Sir:

This is in reply to your letter of August 20th. You state that expert testimony was furnished by two of the physicians connected with the hospital in a recent murder trial, said testimony having been furnished at the request of the State Attorney through the Governor's office. You request my opinion as to whether the fees paid such doctors as expert witnesses should be paid to the individuals serving as witnesses or whether such fees should be placed in the Special Maintenance Account of the hospital. In the event that the individuals retained the fees, all expenses of the trip would be borne by them. In the event however that the money should be retained by the hospital, all expenses would be paid by the hospital.

Under date of December 10, 1935, in an opinion reported at page 686 of the Biennial Report of the Attorney General for the years 1935-36 I stated:

"I do not know of any statute prohibiting the payment of witness fees and mileage to State or County officers or employees when subpoenaed as witnesses in a case."

In view of the fact that no such status was enacted at the 1937 session of the Florida Legislature there is still no statutory prohibition against payment of witness fees and mileage. There is some ground for distinguishing regular witness fees from fees paid for expert testimony for the latter is actually payment for professional services.

The determination of the question propounded by you is essentially an administrative matter. I know of no law which would be violated in the event the administrative officials of the hospital or the Board of Commissioners of State Institutions were to decide the matter one way or the other.

SECTION 18

FLORIDA STATE MARKETING BUREAU

June 25, 1937.

CONSTRUCTION OF CHAPTER 17948 ACTS OF 1937

Dear Sir:

This is in reply to your letter of June 24th enclosing letter from the Florida State Marketing Bureau. You request my opinion as to the proper construction of Chapter 17948, insofar as the same involves the following questions:

1. Is the money appropriated by said statute available to increase the present scale of salaries of some of the employees of the Florida State Marketing Bureau.
2. Is the amount so appropriated available to increase the salary of the Commissioner of the Marketing Bureau?

In regard to the first question, my opinion is that the amounts appropriated by Chapter 17948 are available for the purpose of increasing the salaries of employees. The statute uses the words "and is hereby appropriated to apply on the payment of salaries" of the State Marketing Bureau".

Answering the second question, it is my opinion that the appropriation made by Chapter 17948 is not available to increase the compensation of the State Marketing Commissioner. His compensation is definitely fixed by Chapter 15859, Laws of Florida, Acts of 1933. Chapter 17948 does not have the effect of authorizing an increase in his compensation. It merely appropriates funds that may be applied on payment of that compensation.

SECTION 19

GAME AND FRESH WATER FISH COMMISSION

April 8, 1937.

EXECUTION OF WARRANTS BY CONSERVATION OFFICERS

Dear Sir:

I am in receipt of your letter of the 5th instant in which you state that a Deputy Conservation Officer wished to swear out a warrant against some person for an alleged violation of the fresh water fishing laws. You state that it is your practice to deliver to the Sheriff's office any warrant sworn out before you. You request advice as to whether warrants for such offenses should be delivered to the Sheriff or the Conservation Officer for execution.

In reply I beg to say that it appears such warrants under the law may be executed either by the Sheriff or by one of such Conservation Officers. See Section 1977 (3), Compiled General Laws of Florida, 1936 Supplement, which authorizes the Game and Fresh Water Fish Commission and its duly authorized Conservation Officers to execute warrants and search warrants for violation of the laws relating to game, non-game birds, fresh water fish and fur bearing animals.

It seems to me that where a case is worked up and an affidavit is made by the Sheriff or his officers in such cases, it would be proper to deliver the warrant to the Sheriff for execution. On the other hand it seems where a case is worked up and affidavit made by the Conservation Officer it would be proper to deliver the warrant to such Conservation Officer for execution.

February 26, 1938.

FRESH WATER FISH—BASS—CLOSED SEASON

Dear Sir:

I am in receipt of your letter of the 23rd instant, referring to Section 11-A, Chapter 10123, Acts of 1925, as amended by Chapter 17012, Acts of 1935, the first paragraph of which reads as follows:

"Section 11-A. For the purpose of this Act Lake Okeechobee and Doctors Lake shall be and is considered salt water and fish, except black bass, may be taken at any time and used by the citizens of this State and persons not citizens thereof subject to the restrictions and reservations herein imposed by this Act or otherwise."

GAME AND FRESH WATER FISH COMMISSION

You also refer to Chapter 17932 of the Florida Acts of 1937, which provides a closed season on black bass from March 15th to May 20th inclusive.

Answering your inquiry, I beg to say that, under my construction, Section 11-A of Chapter 10123, as amended by Chapter 17012, as above quoted, means that the taking of black bass from Lake Okeechobee and Doctors Lake, would come under the same provisions as the taking of black bass in other fresh waters of the State, including the provision for a closed season on black bass, fixed by Chapter 17932, Acts of 1937.

August 29, 1938.

**SEARCH AND SEIZURE—CONTRABAND FISH, PARTICULARLY
BLACK BASS**

Dear Sir:

This acknowledges receipt of your letter of August 24th, inquiring as to whether a Conservation Officer can stop an automobile on the public highway where he has reason to believe that the driver is handling contraband fish, particularly black bass.

Section 30 of Chapter 13644, Laws of Florida, 1929, provides as follows:

"SEARCH AND SEIZURE AUTHORIZED AND LIMITED.—
The State Game Commissioner and his duly authorized deputies shall have authority when they have reasonable and probable cause to believe that the provisions of this Act have been violated, to board any vessel, boat or vehicle or to enter any fishhouse or warehouse or other building, exclusive of residence, in which game, hides, fur-bearing animals, fish or fish nets are kept and to search for and seize any such game, hides, fur-bearing animals, fish or fish-nets had or held therein in violation of law. Provided, however, that no search without warrant shall be made under any of the provisions of this Act, unless the officer making such search has such information from a reliable source as would lead a prudent and cautious man to believe that some provision of this Act is being violated."

Section 2 of Chapter 17016, Laws of Florida, 1935 provides in part as follows:

"All duties, powers and responsibilities heretofore vested by law in the State Game Commissioner, or the State Board of Conservation, so far as the same relates to game, non-game birds, fresh-water fish and fur-bearing animals within the State of Florida shall be vested in and conferred upon the Commission of Game and Fresh-Water Fish, hereby created."

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Section 30 above quoted might be construed to be in contravention of Section 22 of the Bill of Rights of our Constitution, which is as follows:

"The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches, shall not be violated, and no warrants issued, but upon probable cause, supported by oath or affirmation, particularly describing the place or places to be searched and the person or persons, and thing or things to be seized."

However, the Supreme Court of the United States in the case of *Carroll vs. United States*, reported in 267 U. S. page 132, has held that there is a distinction between an officer searching a home or dwelling house, or store building, and seizing and searching an automobile, for the reason that a home or dwelling house can not be moved like an automobile, and that sometimes it is not practicable to secure a warrant to search a vehicle because the vehicle might be moved out of the jurisdiction of the officer before a warrant could be obtained. In approving the law as laid down in this case our Supreme Court in the case of *Thurman vs. State*, reported in 116 Fla. 26 said:

"There is also valuable review of the history and development of the law on this subject by Mr. Chief Justice Taft in his able opinion in the case of *Carroll vs. United States*, 267 U. S. 132, 69 L. Ed. 543. In that case, it will be remembered, the Supreme Court of the United States held that search and seizure of an automobile could be made without a warrant, where the officer acted upon probable cause, that is, upon the belief, reasonably arising out of circumstances known to the seizing officer, that such automobile contained that which by law was made subject to seizure and destruction. In the opinion in that case it was said:

"We have made a somewhat extended reference to these statutes to show that the guaranty of freedom from unreasonable searches and seizures by the fourth amendment has been construed, practically since the beginning of the government, as recognizing a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."

The Courts have always zealously guarded the constitutional rights of individuals to have their property remain inviolate against unreasonable searches and seizures, and I am very doubtful as to whether

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or not Section 30 of Chapter 13644, Laws of Florida, 1929, would be held constitutional by the Supreme Court. Our Court has held in the case of Thurman vs. State, supra, that:

"What is a reasonable law authorizing a search or seizure is ultimately for judicial determination upon due consideration of the nature and extent of the evil designed to be remedied and the provisions of the law. No search or seizure is permissible under the law without a proper warrant duly issued, except as a reasonable search and seizure may be allowed by law as an incident to a lawful arrest."

So far as I can find, Section 30 of Chapter 13644, has never been declared unconstitutional by any court of competent jurisdiction. It is, therefore, my opinion that a Conservation officer would only have authority to stop and search an automobile on the public highway when it is absolutely necessary for him to do so to prevent a violation of the law, and when it is impossible for him to secure a search warrant authorizing him to search the car, due to the fact that the automobile is being moved out of his jurisdiction, and that he can only do this upon probable cause, that is, upon the belief, reasonably arising out of circumstances known to the seizing officer, that such vehicle contains that which by law was made subject to seizure for violation of the law.

September 2, 1937.

WELAKA FISH HATCHERY—TRANSFER OF FUNDS TO GENERAL
REVENUE FUND—AUTHORIZED BY SEC. 1365 C. G. L.

Dear Sir:

Regarding your inquiry at the Board meeting on yesterday as to your authority to transfer money from the Commission of Game and Fresh Water Fish fund to the General Revenue fund, in order that the purchase price of certain lands for the Welaka Fish Hatchery might be paid out of the General Revenue fund, it appears that under Section 1365, C. G. L. 1927, whenever there exists in any fund provided by law or departmental regulation a deficiency, which renders such fund insufficient to meet its just requirements, and there exists in another fund, monies in excess of the amounts necessary to meet the requirements of such last mentioned fund, you can, with the approval of the Comptroller, order a transfer of funds from the latter to the former fund, in order to meet temporary deficiencies, provided that the monies so transferred be repaid to the funds from which it was transferred as soon as practicable.

Therefore, if a deficiency exists in the General Revenue fund and there is an excess in the Commission of Game and Fresh Water Fish fund, you can, under the above, transfer the funds from the Commission of Game and Fresh Water Fish fund to the General Revenue fund in

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order to pay the purchase price of part of the lands of Welaka Fish Hatchery. You will observe that this money would have to be paid back at some later date.

October 24, 1938.

WILD DUCKS—CLOSED SEASON ON TAKING

Dear Sir:

I am in receipt of your letter of the 20th instant, referring to your communication of July 27, 1938, and my reply thereto on the same date in which I enclose copy of a letter by my predecessor, Honorable Cary D. Landis, under date of September 19, 1934, and stated that I concurred in said opinion.

You state you interpreted the opinion enclosed with my letter to mean that the open season for taking of migratory water fowl in Florida begins on November 20th.

The copy of opinion enclosed with my letter and bearing date of September 19, 1934, after reciting a number of Federal statutes relating to the subject, contained the following:

"From the above you will note that the Federal statutes provide for Federal regulations as to hunting migratory birds. You will note also that the Federal statutes shall not be construed to prevent the several States from making or enforcing of laws not inconsistent therewith.

"In this situation it would appear that the Federal statutes will control when there is any conflict between such statutes and State statutes.

"When the Federal regulations, under the Federal statutes, prohibit hunting migratory birds on certain days there can be no hunting on such days, although permitted by the State statutes. In other words, there can be no hunting on any days except such days as are permitted by both the Federal statutes and regulations and the State statutes."

The controlling statute is Section 1977 (44), Compiled General Laws of Florida, Permanent Supplement, which fixes the open season for the taking of certain game, including migratory birds, from November 20th to February 15th of the succeeding year. The Section, however, contains the following proviso with reference to doves and ducks:

"Provided, however, that the State game commissioner shall prescribe and declare an open season on mourning doves (com-

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monly called turtle doves), ducks in any county when requested to do so by the board of county commissioners of any county, when consistent with the regulations of the Federal law: * * *

From the above you will note that November 20th is the opening season for hunting ducks generally, but that under the proviso, above quoted, ducks may be hunted prior thereto if not in conflict with the Federal statutes and regulations. Therefore, if the Federal statutes or regulations permit the taking of ducks on and after November 15th, it appears that you are required to prescribe and declare an open season for the period beginning November 15th and continuing to November 20th in any county when requested to do so by the Board of County Commissioners.

SECTION 20
HARBOR MASTER

May 1, 1937.

CONDITIONS PRECEDENT TO APPOINTMENT BY GOVERNOR

Dear Sir:

This is in reply to your inquiry as to whether or not you have the authority to appoint a harbor master for the Port of Fort Pierce. I call your attention to Section 3907, Compiled General Laws of Florida, 1927:

"The Governor shall appoint, by and with the advice and consent of the Senate, one harbor master for each port in the State of Florida, into which have come, during the past five years, vessels of five hundred tons burden and upwards, at the average rate of not less than two hundred and fifty vessels per year, according to the records of the United States customs house at or nearest the port for which such appointment shall be made."

If there have come into the Port of Fort Pierce during the past five years, according to the records of the United States customs house nearest that port, vessels of 500 tons burden and upwards, at the average rate of not less than 250 vessels per year, the Port is qualified for the appointment of a harbor master. If the conditions named in the statute are found to exist, you have the authority, by and with the consent of the Senate, to appoint such a harbor master, said appointment to be for a period of two years, in accordance with Section 3902, Compiled General Laws of Florida, 1927.

SECTION 21

HOTEL COMMISSION

December 28, 1938.

AUTHORIZED TO MAKE RULES AND REGULATIONS—HEALTH
CERTIFICATES, EMPLOYES, HOTELS AND RESTAURANT*Dear Sir:*

I have your memorandum inquiry with reference to Section 35 of Chapter 16,042, Laws of Florida, Acts of 1933, now Section 3382, Compiled General Laws of Florida, Permanent Supplement, reading as follows:

3382. "No person suffering from any contagious or communicable disease shall be employed in any hotel, restaurant, apartment house or rooming house to prepare or handle food, drink, dishes, towels, or linens, or in any other capacity whereby such diseases might be communicated to guests or tenants."

"All employees shall furnish health certificates including a Wasserman test, signed by a registered licensed physician of the State of Florida, whenever the hotel commissioner or his deputy, in his discretion, deems it necessary for the protection of public health."

In reply I beg to say that said statute appears not to have been amended or repealed but is still in force and effect.

As to employees presenting a health certificate before being employed, your attention is called to Section 4 of said Chapter 16,042, Acts of 1933, now Section 246, Compiled General Laws of Florida, Permanent Supplement, reading as follows:

"246. "The hotel commissioner is hereby authorized and required to make such rules and regulations as are necessary to carry out the provisions of this law in accordance with its true intent."

When Sections 246 and 3382, Compiled General Laws of Florida, above quoted, are considered together it appears that the Hotel Commissioner would be authorized to make such rules and regulations as would require employees mentioned in said Section 3382 to present a health certificate upon employment and before commencing work.

SECTION 22

MILK CONTROL BOARD

July 19, 1938.

EXPENDITURES AUTHORIZED TO BE PAID BY COMPTROLLER
UNDER CHAPTER 18022, ACTS OF 1937*Dear Sir:*

You request my opinion in connection with a problem which has arisen concerning expenditures of the Florida Milk Control Board.

Under the provisions of Section 12 of Chapter 18022, Laws of Florida, Acts of 1937, all receipts of the Milk Control Board are required to be paid to the Commissioner of Agriculture to the credit of the General Inspection Fund. Under Section 3 of the same statute it is provided that the expenditures of the Board shall not exceed the revenues collected under the act.

During the month of June, the final month of the last fiscal year, receipts of the Milk Control Board were deposited with the Commissioner of Agriculture to the credit of the General Inspection Fund. The receipts of the General Inspection Fund for the month of June however are not deposited in the State Treasury until the month of July. The question to be determined is whether you are authorized to issue warrants against the General Inspection Fund for expenses of the Milk Control Board incurred during the month of June under the circumstances above stated. Inasmuch as the items involved do not constitute expenditures exceeding the receipts it is my opinion that you have the authority to issue warrants against the General Inspection Fund to pay same. I think that a letter from the Commissioner of Agriculture stating the amount of money on hand to the credit of the Milk Control Board but not on deposit in the State Treasury would be sufficient evidence for your department to issue such warrants.

July 22, 1937.

MILK CONTROL BOARD—PAYMENT OF SALARIES AND EXPENSES
OF BOARD DURING FIRST MONTH OF OPERATION*Dear Sir:*

This is in reply to your letter of July 20th. You state that in all probability receipts of the Milk Control Board for the month of July, under the provisions of Chapter 18022 enacted at the 1937 Session of the Legislature, will not be sufficient to pay its salaries and expenses for that month. Chapter 18022, creating the Milk Control Board as now constituted, became effective July 1, 1937.

You call my attention to Section 12, which provides that monies collected by the Board shall be paid to the Commissioner of Agriculture to the credit of the General Inspection Fund, and also to the pro-

MILK CONTROL BOARD

vision of Section 3 to the effect that "The expenditures of the Board shall not exceed the revenues collected under this Act."

It is my opinion that the limitation on expenditures of the Board above referred to was not intended to apply from month to month. The legislative intent was in all probability to require receipts and expenditures to balance each year. It is my opinion that it is within your discretion to advance the salaries and expenses of the Board for the first month of its operation, so long as you do not permit a deficit to occur for the fiscal year.

SECTION 23

MOTOR VEHICLE DEPARTMENT

December 15, 1938.

MOTOR VEHICLES—CERTIFICATES OF TITLE AS PRIMA FACIE
BUT NOT CONCLUSIVE EVIDENCE OF OWNERSHIP*Dear Sirs:*

You jointly request my opinion as to whether or not the title of a motor vehicle passes to the purchaser upon delivery of the vehicle and title certificate or whether legal ownership vests only when the endorsed title certificate has been submitted to the Motor Vehicle Commissioner in connection with the application for a new title certificate. This is important to Honorable Vivian Collins by reason of the fact that in the connected operation of his department with the Federal Government privately owned motor vehicles are frequently used and reimbursement for the use of such automobiles can only be made to persons having legal title thereto. For this reason there are many instances in which it is important to determine the date of vesting of such legal ownership.

I call your attention to the following statement set forth in the opinion of the Supreme Court of Florida in the case of *Farrelly vs. Heuacker*, 159 So. 24, text page 25:

"It is settled law in this country that the title certificate and the person to whom the license is shown to be issued constituted presumptive ownership in the car, but such presumption may be met and overcome by evidence. *Ford vs. Hankins*, 209 Ala. 202, 96 So. 349; *Berry on Automobiles* 1037, 1158."

In this connection I call your attention to the fact that under the provisions of Section 3979, Compiled General Laws, 1927, the purchaser of an automobile is required within ten days after the assignment to him of the certificate of title of the vendor to apply to the Motor Vehicle Commissioner for a new title certificate. If he fails to comply with these provisions he shall be considered to be driving a motor vehicle without a certificate of title and shall be subject to the punishment prescribed therefor.

It is my opinion that title to the motor vehicle vests in the purchaser in the same manner as title to any other tangible personal property, upon delivery thereof in exchange for an agreed consideration, and that legal ownership is not delayed until application is made for a new title certificate in the name of the purchaser. A certificate of title is evidence of ownership but it does not in itself constitute ownership.

MOTOR VEHICLE DEPARTMENT

January 22, 1938.

MOTOR VEHICLES—CONSTRUCTION OF "NET WEIGHT"*Dear Sir:*

This is in reply to your letter of January 19th in which you request my opinion as to whether the weight of water, oil and gasoline is to be added to the shipping weight of a motor vehicle for the purpose of determining the license tax classification.

I note that in Section 1285, Compiled General Laws, Permanent Supplement Edition, private motor vehicles are classified in accordance with their "net weight" for license tax purposes. I find that in the same section net weight is defined in the following words:

"Net weight shall be construed to be the actual scale weight with complete catalogue equipment."

It is my opinion that this does not include the weight of water, oil and gasoline but is limited to the shipping weight with complete catalogue equipment.

August 17, 1937.

MOTOR VEHICLES—DEALERS TAGS—USE ON CARS FOR HIRE*Dear Sir:*

I am in receipt of your letter of the 9th instant enclosing copy of a communication * * * the first paragraph of which reads as follows:

"I am writing you for the purpose of obtaining, if possible, an opinion from the Attorney General in regard to the use, on motor vehicles, of Dealer's tags when not being used by the dealer or his agent, but when being used by a person when he has his truck (with the Dealers Tag) loaded with fruit crates and who admits before the Court, that he is enroute to get a load of fruit. He also stated that he was contemplating on purchasing said truck. We have had a conviction of a man who was driving under such circumstances and who drove said truck all the way up here from Fort Lauderdale."

Your attention is called to Section 1313, Compiled General Laws of Florida, 1927, the last sentence of which reads as follows:

"* * * Dealers' tags provided in this law shall be valid for use on motor vehicles owned by the registered dealer to whom such tag was issued while such motor vehicle is in transit from shipping point to dealer's place of business and while being demonstrated for sale; but shall not be valid for use for hire."

MOTOR VEHICLE DEPARTMENT

The above quoted statute does not appear to confine the demonstration of cars to the personal presence of the dealer or his agent. Many prospective purchasers prefer to drive and test a car without the presence of a dealer or his agent, and it is to be presumed that a prospective purchaser of a truck for hauling purposes would particularly desire to ascertain the performance of a truck when loaded before making his purchase and may also prefer to make the test alone and without the presence of the dealer or agent. It would, therefore, appear that a reasonable test by the prospective purchaser of a motor vehicle, whether passenger or truck, may be made in a vehicle with a dealer's license with the consent of the dealer and without the presence of such dealer or his agent. What would be a reasonable test under all circumstances would be difficult to determine. The words "shall not be valid for use for hire" should be kept in mind and the question of whether or not a reasonable test is being made by a prospective purchaser of a motor vehicle would have to be made and determined for each particular instance.

October 7, 1937.

**MOTOR VEHICLES—SALE—OUT OF STATE CARS—CHAPTER 18032,
ACTS OF 1937—EFFECT ON OUT OF STATE DEALERS—
EFFECT WITHIN NAVAL RESERVATION
AT PENSACOLA**

Dear Sir:

This is in reply to your letter of September 29th.

You first request my opinion as to whether or not the provisions of Chapter 18032, Laws of Florida, Acts of 1937, apply to automobile dealers having a place of business in another State near the Florida border, and whose trade area extends into Florida. It has been urged that such dealers should be permitted to bring used cars into the State of Florida for sale in their trade areas without complying with the provisions of the above Act.

It is my opinion that no possible construction of the provisions of this statute could be reasonably made which would exempt such dealers from complying with its provisions. In other words, the statute must be enforced as written, since there is no ambiguity in its terms.

You next request my opinion as to the effect of this statute within the territory embraced within the Naval Reservation at Pensacola.

I assume that the jurisdiction over such lands has been ceded to the United States under the provisions of Section 7 of the Compiled General Laws of Florida. In that event, this law would have no effect within the limits of the Naval Reservation. In support of this view

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of the law, I call your attention to the case of Arlington Hotel Company vs. Fant, decided by the Supreme Court of the United States and reported in Volume 73, Law Ed., page 47. In that case the United States Supreme Court held that a statute of Arkansas relieving hotel keepers of liability for destruction by fire of property of guests is not in force in Hot Springs Park, which was ceded to and accepted by the United States as a public park.

June 8, 1937.

MOTOR VEHICLES—STATUTORY DEFINITION OF "FOR HIRE"
TRANSPORTATION

Dear Sir:

This is in reply to your letter of June 1st. You request my opinion as to whether or not when freight is transported in a motor vehicle and the freight is not owned exclusively by the person owning such transportation shall be deemed "For Hire" even though such freight was hauled without compensation. This involves a matter of statutory construction. I quote the following from Section 1285, Compiled Laws of Florida, Permanent Supplement, page 538:

"When freight or passengers are transported in a motor vehicle for compensation, outside the limits of any municipal corporation in this State, *or* when freight is transported in a motor vehicle and the freight transported is not owned exclusively by the person, association, firm or corporation owning such vehicle, so that there is identity of ownership between the vehicle and the goods, such transportation shall be deemed 'for hire'." (Italics ours.)

It is my opinion that under such circumstances the transporting comes within the definition of "for hire" transportation under the provisions of law hereinabove set forth. In support of this position I call attention to the word "or" appearing in the statute. That word clearly indicates that "for hire" transportation includes transportation of freight or passengers for compensation or transportation of freight in vehicles owned by persons other than the owner of the freight.

July 18, 1938.

MOTOR VEHICLES—TITLES—LIEN HOLDER ACTING AS
AUCTIONEER—SECTION 5384, C. G. L.

Dear Sir:

You request my opinion as to whether or not a lien holder may act as auctioneer if he desires to bid on a motor vehicle which is being sold under Section 5384, Compiled General Laws of Florida, 1927. The pertinent provisions of Section 5384 are as follows:

MOTOR VEHICLE DEPARTMENT

"By Sale Without Judicial Proceedings.—Whenever any person shall entrust to any mechanic or laborer materials with which to construct, alter or repair any article of value, or any article of value to be altered or repaired, such mechanic, or laborer, if such article be completed and not taken away, and the fair and reasonable charges not paid, may, after three months from the time such charges become due, sell the same, and such sale shall be at public auction for cash."

Your reason for requesting this opinion is to determine the validity of a statement contained in the form of special affidavit which is executed as a prerequisite to the issuance of a title certificate to one who has purchased a motor vehicle sold under the statutory provisions above referred to. This statement is: "Lien holder may not act as auctioneer if he desires to bid on the vehicle".

I believe that the correct principles of law applicable to the situation are stated in Volume 5, American Jurisprudence, page 453, as follows:

"The principle that an agent having the power to sell or convey the property of his principal cannot, directly or indirectly purchase such property without the consent of his principal precludes an auctioneer, without the consent of his employer, from becoming the purchaser or interested in the purchase of the property which he is employed to sell. If he does so and the owner seeks to impeach the sale, no inquiry will be permitted into the fairness or unfairness of the transaction. Such a sale, however, is voidable, not absolutely void; strangers to the property may not question it."

It is my opinion that a sale to a lien holder who himself acts as auctioneer would be voidable and subject to attack by the original owner but not by a third party. While the original owner of the motor vehicle might be able to set aside the certificate of title issued to the purchaser, it is my opinion that you would not be justified in withholding the issuance of same under the circumstances here considered.

March 4, 1937.

**MOTOR VEHICLES—TYPE OF LIENS TO BE NOTED IN RECORDS
OF MOTOR VEHICLE DEPARTMENT**

Dear Sir:

This is in reply to your letter of February 22nd in which you request my opinion as to the type of liens which the law permits to be noted on the records of your Department. I call your attention to Section 3978, Compiled General Laws of Florida, 1927, which reads as follows:

MOTOR VEHICLE DEPARTMENT

"After July 1, 1923, the owner of every motor vehicle in this State, except as herein otherwise provided, shall make application to the Comptroller of the State for and be granted an official "certificate of title" to such motor vehicle, or shall present satisfactory evidence that such certificate covering such motor vehicle has been previously issued to the applicant. Said application shall be upon a blank form to be furnished by the Comptroller and shall contain a full description of the motor vehicle, which description shall contain the manufacturer's number, the motor number, the chassis number and any distinguishing mark, together with a statement of the applicant's title, and of any liens or incumbrances upon such motor vehicle, and such other information as the Comptroller may require. The Comptroller if satisfied that the applicant is the owner of such motor vehicle or otherwise entitled to have the same registered in his name, shall thereupon issue to the applicant an appropriate certificate of title over his signature, authenticated by his official seal. Said certificates shall be numbered consecutively, beginning with number one, and shall contain such description and other evidences of identification of said motor vehicle as the comptroller may deem proper, together with statement of any liens or incumbrances which the applicant may show to be thereon. The charge for each original certificate of title so issued shall be one dollar. Said certificate shall be good for the life of the car so long the as same is owned or held by the original holder of such certificate and need not be rendered annually, or at any other time except as herein provided."

Under the provisions of the statute above referred to the application for title must contain a statement of "any liens or incumbrances" and the certificate must also state this information. The words of the statute are sufficient to include every type of lien or incumbrance, regardless of whether or not the same represents a part of the actual purchase price of the car. The application and certificate should contain a statement of any chattel mortgages existing at the time the application is filed.

In regard to liens or incumbrances which have for their purpose the securing of loans or other debts the title does not pass to the holder of such liens or incumbrances by virtue thereof and he cannot obtain title except through judicial proceedings.

SECTION 24
NATUROPATHIC EXAMINERS

November 23, 1937.

**LICENSES—RENEWAL FEE SECS. 3477 AND 3484, COMPILED
GENERAL LAWS, 1927**

Dear Sir:

I am in receipt of your letter of November seventeenth, the body of which reads as follows:

"The Florida State Board of Naturopathic Examiners, whose duty it is to carry out the Legislative Act creating this Board and to keep in contact with all practicing Naturopathic Physicians within the State of Florida for the protection of the public, would appreciate you giving us an opinion construing the rights of this Board to collect the \$5.00 fee under Section 3477 of the 1927 Compiled General Laws of Florida. This section covers the payment of the annual fee by practicing Naturopathic Physicians of the State of Florida for the renewal of each license."

Section 3477, Provides that a fee of \$5.00 shall be paid by every person practicing naturopathy in this State on or before the first day of May of each year after a license is issued to such person for a removal of said license.

The Legislature evidently had in mind that, in order to protect the public and the profession itself, there should be some system of restriction of the various persons practicing and provided a small fee of five dollars per year as a renewal fee.

Inasmuch as the profession itself should be interested in protecting itself from any imposters or persons who are not qualified, it occurs to me that the Court will very likely enforce the collection of this fee as a prerequisite to continue in practice.

Probably the best method of testing this would be to bring an injunction proceeding seeking to secure a restraining order against some practitioner who continues to practice his profession after failure to pay the fee provided by statute.

SECTION 25

OKEECHOBEE FLOOD CONTROL DISTRICT

July 1, 1938.

RESOLUTION OF BOARD—NECESSITY OF MEETING
FOR APPROVAL*Dear Sir:*

You have handed me correspondence between yourself and Honorable Ben Herr, Secretary, Okeechobee Flood Control District, relative to a proposed resolution of the Board relating to the purchase and distribution of certain navigation charts, said resolution to be signed by the respective members of the Board without a regular meeting.

The said resolution is one requiring the exercise of judgment and discretion, and after a search of the statutes and the law pertaining to official acts of public boards, it is my opinion that such resolution may not be legally passed by the Board except in meeting assembled with the statutory quorum of six members present.

I quote you from 46 Corpus Juris, 1034, Officers 299, as follows:

"Necessity of convened session. Such a board can, as a rule, act officially only as such in a convened session with the members of a quorum thereof present, although it has been held that this rule only applies where the act to be performed requires the exercise of discretion and judgment, and where the act is merely ministerial in its character, it may act separately and need not be convened in a body or notified so to convene for that purpose, although a majority must concur and unite in the performance of the act."

Under Section 1631 (5) Compiled General Laws of Florida, 1936 Supplement, while regular meetings shall be held at a meeting place to be fixed and determined by the Board, special meetings may be held upon the call of the chairman or vice-chairman at any place within or without the State.

I, therefore, suggest that a meeting be called at some place convenient to those members of the Board in the locality of the District, and that at least one of the Cabinet Officers who is a member of the Board, attend such meeting in order that a quorum of six may be present.

June 21, 1937.

SALARIES—ENGINEERS AND ATTORNEYS

Dear Sir:

I acknowledge receipt of your letter of June 18, 1937, in which you ask whether or not Chapter 18039 limits the amount which can be paid to engineers and attorneys for services to \$500.00 per month.

OKEECHOBEE FLOOD CONTROL DISTRICT

Section 4-A provides as follows:

"That from and after July 1, 1937, the Board shall not spend an amount in excess of Five Hundred Dollars per month for salaries of the secretary or other similar office, position or employment and for all other employees of the District and of said Board and no additional sum shall be expended, or authorized to be expended by said Board either directly or indirectly, for any salaries."

Words and Phrases defines the word "salary" as denoting a recompense or consideration to be paid a public officer for continuous, as contra-distinguished from particular, services and may be denominated the annual or periodical wages or pay, so that while salary and fees are often treated as synonymous, in fact they are not so, since fees is taken to be recompense for particular acts or services.

As the term is ordinarily understood, compensation for work done by attorneys or engineers is not termed a salary.

It is my opinion that the Legislature by Chapter 18039 meant to limit the amount of money that should be paid the regular employees of the Board, that is, those who are paid a fixed or periodical compensation for services depending upon the time and not upon the amount of service rendered. So it would be my opinion that the Board is not limited as to the amount which should be paid engineers and attorneys for professional services rendered the District.

SECTION 26

OSTEOPATHIC MEDICAL EXAMINERS

June 2, 1937.

EXAMINATIONS—CITIZENS OF UNITED STATES ONLY, MAY TAKE

Dear Sir:

This is in reply to your letter of June 1st in regard to Section 3422, Compiled General Laws of Florida, 1927. Under the provisions of this statute in order to be eligible to take the examination provided for therein one must be a citizen of the United States. You will note that this is a prerequisite not to the issuance of a license but to taking the examination.

It is, therefore, my opinion that no person is eligible to take the examination until becoming a citizen of the United States.

SECTION 27

OVERSEAS ROAD AND TOLL BRIDGE DISTRICT

June 24, 1938.

PUBLIC FUNDS—NOT AUTHORIZED TO EXPEND

Dear Sir:

I have your letter of June 23rd wherein you state: "As it is one of my constitutional duties to take care that the laws of this State are faithfully executed, I request your opinion * * *"

The question submitted is: Does the Overseas Road and Toll Bridge District (created by Chapter 16598, Special Acts of 1933) have the authority to expend money under the following resolution:

"BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF OVERSEAS ROAD AND TOLL BRIDGE DISTRICT MONROE COUNTY, that a donation and appropriation to the Overseas Celebration Committee be made in the sum of \$3,-000.00 to be used for the expenses incurred in the ceremonies and dedication of the Overseas Highway on July 2nd to 4th, 1938; and that the Overseas Celebration Committee submit a program, and or budget setting forth the use for which these funds shall be spent, and that such program and or budget shall be submitted to the Reconstruction Finance Corporation for their approval; and

FURTHER RESOLVED that the salary of the stenographer hired at the meeting of the Board on May 7th be paid out of this donation."

You state further that the Overseas Celebration Committee referred to in the resolution is a group of Key West citizens in charge of the arrangements for the celebration; that the Committee proposes to use said donation to defray expenses of said celebration, including costs of plans and carrying out program and ceremony celebrating the fact that the toll highway is now open to travel, and to be used in providing entertainment for visitors, housing official guests, printing stationery and mailing out invitations, stenographic services, and employing services of publicity or promotion agent for the celebration, and other miscellaneous expenses; that it is reported that the celebration will tend to stimulate a large number of people to Key West who will pay tolls over the road, sufficient to produce an amount equal to said donation; that it is further reported that said celebration will advertise, give publicity to and create greater public interest in the Overseas Highway, and will increase tourist over the Highway which will result in increasing the toll revenues of the District.

Regardless of how laudable this enterprise may be or its ultimate benefit to this District, we, of course, must turn to the authorities for

OVERSEAS ROAD AND TOLL BRIDGE DISTRICT

the answer to the question propounded. Under Municipal Corporations, 19 R. C. L., Paragraph 99, the writer lays down the following rule:

"It is generally conceded that a municipal corporation has no implied power to expend its funds for providing refreshments, entertainments, and dinners for delegates to a convention; or for entertaining guests at a supper or ball; or indeed for the purpose of extending hospitality or furnishing social pleasures either to citizens or invited guests. It is, however, considered in some jurisdictions that, as the custom of commemorating important historical, military, and civil events is as old as mankind, and as at common law the right of municipalities to make appropriations out of the public funds for the proper observance of such occasions was recognized for centuries, there is no reason why a municipality, unless restricted by statute, should not be permitted to make reasonable appropriations in order fitly to commemorate public events in which all of the citizens thereof are, or should be, interested. In the jurisdictions in which this principle is accepted a municipal corporation has implied power to appropriate its funds for fireworks, decorations and other purposes necessary and proper for a successful celebration. It is held, however, *by the weight of authority* that in the absence of *express statutory* permission a municipal corporation has no power to appropriate money for the celebration of holidays or of anniversaries of important events in its *own history* or in that of the country." (Italics supplied.)

Since under the Act of its creation this Board is a body corporate and a public subdivision of the State of Florida (Section 2), the laws relating to municipal corporations are by analogy applicable thereto.

McQuillin Municipal Corporations, Second Edition, Vol. I, states the rule to be as follows:

"Unless expressly authorized by charter or statute, a municipal corporation cannot appropriate or give away the public monies as pure donations to any person, corporation or private institution * * *"

One of the cases recited is *Schieffelin vs. Hylan, Mayor, et al*, 140 N. E. 689, and it is particularly interesting in this connection because the facts are so similar to those under consideration. In this case it appeared that the administration of the Greater City of New York conceived the plan of having an elaborate and expensive celebration of the twenty-fifth anniversary of the establishment of their municipality. For the purpose of formulating and carrying out the plan for such a celebration and of spending the money which might be appropriated to

OVERSEAS ROAD AND TOLL BRIDGE DISTRICT

pay its expenses, a committee of citizens was appointed which was known as the "Mayor's Committee." This Committee drafted a tentative plan, made an estimated budget of the expenses, and submitted same to the board of estimate and apportionment for action.

The Board approved the plan and requested the board of aldermen to put it into effect. A taxpayer filed a bill to enjoin this action. The lower court issued the injunction. The Court of Appeals of New York after pointing out one reason why the injunction should be sustained said:

"We think that these facts furnished two reasons for sustaining the present injunction. We know of no law which would permit a municipality to turn over to an unofficial committee public monies, to be expended in carrying on such a celebration as this. In fact we should think it would be very dangerous if it could be done."

This reasoning is not only most logical but it is a very sound rule to follow whenever the question of the expenditure of public monies is involved, and I believe that this case sufficiently answers the question propounded.

However, since some of the text writers have indicated that such expenditures might be made if there was expressed statutory authority for same, I shall now examine the Act in order to ascertain if possible, if there is any expressed authority contained therein that would permit such an expenditure.

The only Sections that I have been able to find are the following:

"Section 4. (a) To establish, erect, construct, build, control, regulate, maintain and operate toll bridges and toll highways * * * to do and perform such other acts, works and things as said Board shall deem advantageous to accomplish the foregoing object in particular, and the purposes of this act in general."

"Section 4 (d) To construct, maintain and operate such other works and improvements as may be determined by the Board to be needful, necessary or beneficial for the use, preservation, operation, and maintenance of the works provided for in this act, or advantageous to same."

"Section 4 (g) To do and perform any and all other acts which, in the judgment of the said Board, shall be conducive to the use, upkeep, operation, maintenance and betterment of the works and projects of the said Overseas Road and Toll Bridge District."

OVERSEAS ROAD AND TOLL BRIDGE DISTRICT

"Section 4 (h) To do and perform any and all other acts which, in the judgment of said Board, shall be necessary and/or expedient to carry out the purposes of this Act."

It is apparent to me that there is no expressed authority in the quoted provisions of the Act for the proposed expenditure and in saying this, I am endeavoring to follow the Supreme Court of Florida, which, of course, is my guiding star in matters of this kind.

This Court had before it a somewhat similar situation in the case of *Loeb vs. City of Jacksonville, et al.*, 134 So. 205. In that case a taxpayer prayed for an injunction against the City of Jacksonville to restrain it from making certain donations to private individuals and organizations for conventions, et cetera. The City contended that this appropriation "and tax levy was for advertising purposes and that the City exercised proprietary and quasi corporate functions as well as governmental functions; that it is a large commercial city and railroad terminus for many large trunk line railroads extending into all parts of the United States and had favorable railroad passenger and freight rates; that its population was large and the assessed value of its real and personal property amounted to \$99,000,000. * * * that it has the authority to acquire and own and operate * * * recreation fields, golf courses, and stadiums and public buildings for recreation and amusement * * * to own and operate auditoriums in which to hold public hearings, concerts, and public conventions and to 'meet the changing conditions and necessities of the public'."

The chancellor said:

"It is a complex industrial organization and vast property owner. It has lots of things to sell—electricity, water, dockage, amusement, and often gas and transportation. And it derives enormous revenues from these sources. It is interested in expanding its territory, increasing its population, and bringing in new industries. These accretions to the things that constitute the city mean more patronage for its municipal utilities, more money circulating within its borders, more taxes coming into its treasury for streets, parks and public buildings, better homes, better churches, better schools."

However, the Court held:

"The doctrines are well established in the state relating to municipal corporations that the existence of authority for a municipality to act *cannot be assumed*. If a reasonable doubt exists as to a particular power, it should be resolved against the city * * *. Any ambiguity or doubt as to the extent of a power attempted to be exercised by a city out of the usual range or

OVERSEAS ROAD AND TOLL BRIDGE DISTRICT

which may effect the common law right of a citizen should be resolved against the city * * *.

Applying the above rule to the attempted exercise by the city of Jacksonville of the power to levy and collect a tax from its citizens for the purposes which the bill and answer disclose, the power so attempted to be exercised should be resolved against it * * *"

I do not think it could be successfully contended that under the above quoted provisions of the Act creating the Overseas Road Board that there was not a reasonable doubt as to the power of this Board to donate public monies as contemplated by the Resolution. I certainly think it could be said that the power attempted to be exercised was out of the usual range of a public corporation of this kind particularly in view of the New York case of *Schieffelin vs. Hylan, Mayor, et al.*, supra.

In concluding that the Commissioners of the Overseas Road and Toll Bridge District do not have legal authority to expend its funds for the donation contemplated by its resolution, I am not unmindful of Section 38 of the said Act which provides:

"It is intended that the provisions of this Act shall be liberally construed for accomplishing the purposes authorized and provided for, or intended to be provided for by this Act, and where a strict construction of the provisions hereof would result in the defeat of the accomplishment of any part of the purposes authorized by this act, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen."

However, as hereinbefore pointed out, I do not believe that it was within the contemplation of the Legislature that this Board could make a donation to third parties even though it might tend to advertise the road.

My attention has been called to and I have considered the cases appearing in the annotation contained in 30 A. L. R. 1935 relating to "use of public funds or exercise of taxing power to promote patriotism." But I do not find any authority from these cases to justify the donation provided for in the Board's Resolution. On the contrary, our own Supreme Court has apparently refused to follow this line of cases for in the very recent case of *City of Daytona Beach vs. King*, 181 So. 1. The Court cited with approval from *Cooley's Constitutional Limitations*, vol. 1, 8th Ed., page 459 et seq:

"* * * The common council of the City of Buffalo undertook to provide an entertainment and ball for its citizens and

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certain expected guests on the 4th of July, and for that purpose entered into contract with a hotel-keeper to provide the entertainment at his house, at the expense of the city. The entertainment was furnished and in part paid for, and suit was brought to recover the balance due. The city had authority under its charter to raise and expend monies for various specified purposes, and also 'to defray the contingent and other expenses of the city.' *But providing an entertainment for its citizens is no part of municipal self-government, and it has never been considered, where the common law has prevailed, that the power to do so pertained to the government in any of its departments. The contract was therefore held void, as not within the province of the city government.*" (Italics supplied.)

To paraphrase the language of the Court in *McClure vs. Nye*, 133 Pac. 1145, I have neither the right or the inclination to ignore or over-ride the law even for so worthy a purpose.

SECTION 28
PHARMACY BOARD

October 28, 1938.

REGISTRATION CERTIFICATE—REVOCATION NOT AUTHORIZED
UNDER SEC. 3528 C. G. L.

Dear Sir:

From the correspondence attached to your communication, it appears that * * * left a medical prescription with Doctor * * * a pharmacist, and asked that the prescription be filled. It appears that the pharmacist has refused to fill the prescription and has also refused to return it. You ask to be advised as to the authority of the Board of Pharmacy to revoke the registration certificate of such doctor.

The grounds for revocation of a pharmacist's registration certificate are set forth in 3526 Compiled General Laws of Florida, 1927, and do not cover a situation such as is here presented. Hence I am of the opinion that this conduct does not constitute legal ground for revocation of doctor's certificate of registration.

SECTION 29

PILOT COMMISSIONERS

September 4, 1937.

APPOINTMENT OF PILOTS

Dear Sir:

This is in reply to your letter in regard to the right of Mr. * * * to be appointed by the Board of Pilot Commissioners at the Port of Jacksonville, Florida, as a licensed pilot of your port.

In the first place, the matter of appointing pilots under the provisions of Chapter 18059, Acts of 1937 is a discretionary one so far as the number of pilots is concerned. It is understood, of course, that this discretion as to the number of pilots to be appointed is limited by the number which may be appointed under the law at any particular port. Chapter 18059 contains the following provisions: "* * * they shall appoint and license such number of those found qualified as are requisite to perform the duties required of the pilots for that port * * *."

The contention that the limits in the number of pilots provided in Chapter 18059 may be enlarged to include apprentices who were serving at the time Chapter 18059 became effective, to-wit, May 18, 1937, is untenable. Chapter 18059 merely amended Section 2463 of the Revised General Statutes of Florida as amended by subsequent acts. The only change in the prior law which I have been able to find is in the number of pilots permitted at the port of Pensacola. The rest of Section 2463, Revised General Statutes of Florida as amended prior to 1937 and which continued without change in the section as amended by Chapter 18059 has to be construed as if no amendment were made. I quote the following from 59 Corpus Juris, page 109:

"Where an amendment leaves certain portions of the original act unchanged, such portions are continued in force, with the same meaning and effect they had before the amendment. So where an amendatory act provides that an existing statute shall be amended to read as recited in the amendatory act, such portions of the existing law as are retained, either literally or substantially, are regarded as a continuation of the existing law, and not as a new enactment."

It is therefore my opinion that Chapter 18059 does not have the effect of enlarging the number of pilots permitted for the Port of Jacksonville to the extent of the number of apprentices serving on May 18, 1937.

PILOT COMMISSIONERS

March 20, 1937.

PILOT COMMISSIONERS—AUTHORITY TO MAKE RULES AND
REGULATIONS AND ENFORCEMENT THEREOF*Dear Sirs:*

This is in reply to your letter of March 8th.

I have been advised by the Governor's Office that steps have been taken to enforce the regulation concerning which you inquire which deals with the fueling of boats in the Miami yacht basin. This regulation was enacted for the purpose of eliminating a fire hazard in the congested area of the yacht basin. I, therefore, reply to the questions which you propound and refer to the authorities, which, in my opinion, authorize the promulgation and enforcement of said regulation.

Answering your first question, I would say that the Board of Pilot Commissioners has the right to make rules and regulations for the government and protection of the port under Section 3881, Compiled General Laws of Florida, 1927. Answering your second question, the Board of Pilot Commissioners, under the decision of the Supreme Court of Florida in the case of Board of County Commissioners of Escambia County vs. Board of Pilot Commissioners, 42 So. 697, and under Section 3882, Compiled General Laws of Florida, 1927, has the right at lease to detect violations and report same to the prosecuting officers of the County. Answering your third question, the violation of any lawful rule or regulation of the Board is punishable under Section 7995, Compiled General Laws of Florida, 1927. Inasmuch as violations of the rules of the Board are thus expressly condemned by the criminal law, the regular enforcement officers should make the arrests and institute prosecutions. The harbor-master, who is required by Section 3909, Compiled General Laws, 1927, to obey the directions of the Board, can be instructed to detect violations and cause complaints to be made for the arrest of violators.

SECTION 30
SECURITIES COMMISSION

January 19, 1937.

INTOXICATING LIQUORS—WAREHOUSE RECEIPTS
NOT SECURITIES

Dear Sirs:

This is in reply to your letter of November 23rd in which you request my further opinion as to whether or not certain types of whiskey warehouse receipts described therein are "securities" within the definition contained in the Uniform Sale of Securities Act.

The previous opinion under date of November 6, 1934, to which you refer reads in part as follows:

"Your attention is further called to a specimen copy of warehouse receipt among the papers attached to your letter, which indicates that a whiskey warehouse receipt is for a particular barrel or package with serial number indicated.

"Your attention is further called to Vol. 4, Words and Phrases (2d Series), 1239, defining a warehouse receipt as follows:

"An instrument on its face showing that the signer has in his possession designated goods of another for storage and obligating him to deliver the same to a specified person, or to his order, or bearer, on return of the instrument."

"Under the above definition, I do not think that whiskey warehouse receipts are 'securities' under the above quoted statute."

The Uniform Sale of Securities Act was enacted for the purpose of preventing fraud. My attention has been called to a fraud perpetrated in Canada in which case an investigation disclosed that there was actually no whiskey stored in government bonded warehouses. To come within the rule stated in my opinion of November 6, 1934, the whiskey warehouse receipts must be issued by the government bonded warehouses, which fact must appear on the face of the certificate.

Prior to June 26, 1936 there were various classes of bonded warehouses, to-wit: Distillery bonded warehouses, general bonded warehouses, and special bonded warehouses. In section 1265 of Title 26, U. S. C. A. the distinction between the various types of bonded warehouses was removed and all bonded warehouses are now designated as "Internal Revenue bonded warehouses." It is provided in said section 1265 that such warehouses shall be subject to regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. I would recommend that you obtain from

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the Commissioner of Internal Revenue, if possible, a list of duly authorized Internal Revenue bonded warehouses so that you can ascertain from consulting this list whether a particular warehouse receipt is the receipt of a duly designated Internal Revenue bonded warehouse.

July 27, 1938.

SECURITIES ACT—RETURN OF FEES—INVESTIGATION OF ASSETS
OF ISSUER'S SECURITIES—SECTION 8 OF CHAPTER
14899, ACTS OF 1931

Dear Sirs:

You request my opinion in regard to two questions which may be substantially stated as follows:

1. Are statutory fees paid to the Florida Securities Commission on filing an application for registration of securities, returnable to the applicant in the event that registration is denied or the application is dismissed?

2. Does the Florida Securities Commission have the right to require an applicant seeking to register securities by qualification, to own assets as a prerequisite to granting a certificate of qualification?

The late Attorney General Cary D. Landis passed upon the first question in an opinion reported at page 302 of the Biennial Report of the Attorney General for the years 1931-1932. I agree with that opinion which reads as follows:

"This refers to your request for an opinion as to whether or not the fees paid to the Florida Securities Commission at the time of filing information required by law, shall, in the event the application is not granted or the petition is dismissed, be returned to the applicant.

"The Florida Securities Commission Act provides that these fees shall be paid at the time of the filing of the statements. When the statements are once filed, the Commission is then put to the necessity of making a study of the statements and information, and making investigations, etc. I find nothing in the law that provides for the return of any part or all of these fees. It is my opinion that the Legislature intended that when the application was once filed and the money paid in, that this money then becomes a part of the revenue of the State and is not returnable."

I am advised that the Florida Securities Commission has heretofore taken the position that when an applicant's financial statement

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did not disclose reasonable liquid or current assets over and above liabilities, it would be contrary to sound business principles to permit the securities of such an applicant to be sold to the public under a certificate from the Commission. In order to deal fairly with all applicants and preserve uniformity in passing upon applications for registration, the commission has permitted to be registered by qualification only such securities as were to be sold by an issuer having assets in excess of liabilities in an amount equal to approximately twenty-five per cent of the securities to be sold. This, however, has not been an inflexible rule for in some cases the percentage required has been raised and in others lowered in accordance with the circumstances of individual cases.

In accordance with the policy of the Commission, when an application has been filed and examined by the Department and it is found that the assets were insufficient in accordance with the standards hereinabove referred to, the applicant is afforded an opportunity to meet said requirements. If such requirements are not met by the applicant, the application is either denied or dismissed.

The objection has been made that the Securities Act affords no basis for the practice of the Commission in enforcing compliance with the above requirements as a prerequisite to issuing a certificate of registration. In considering the objection, it is necessary to consider Section 8 of Chapter 14899, Laws of Florida, Acts of 1931, the pertinent provisions of which read as follows:

"All securities required by this act to be registered before being sold in this State, and not entitled to registration by notification shall be registered only by qualification in the manner provided by this section.

"The Commission shall receive and act upon applications to have securities registered by qualification, and may prescribe forms on which it may require such applications to be submitted

* * *

"The Commission may require the applicant to submit to the Commission the following information respecting the issuer and such other relevant information as the Commission may in its judgment deem necessary to enable it to ascertain whether such securities shall be registered pursuant to the provisions of this section: * * *

"(d) A statement of the capitalization of the issuer; a balance sheet showing the amount and general character of its assets and liabilities on a day not more than sixty days prior to the date of filing such balance sheet; a detailed statement

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of the plan upon which the issuer proposes to transact business; a copy of the security for the registration of which application is made and a copy of any circular, prospectus, advertisement or other description of such securities then prepared by or for such issuer or by or for such applicant (if the applicant shall not be the issuer) to be used for distribution or publication in this State.

"(e) A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year, or if in actual business less than one year, then for such time as the issuer has been in actual business. * * *

"If upon examination of any application the Commission shall find that the sale of the security referred to therein would not be fraudulent and would not work or tend to work a fraud upon the purchaser, *and that the enterprise or business of the issuer is not based upon unsound business principles*, it shall record the registration of such security in the Register of Securities, and thereupon such security so registered may be sold by the issuer or by any registered dealer who has notified the Commission of his intention so to do, in the manner hereinafter provided in Section 11, subject, however, to the further order of the Commission as hereinafter provided." (Italics ours.)

The Supreme Court of Michigan in the case of *People vs. Sowell et al*, reported in 271 N. W. page 751, text 753, in construing a statute similar to our Securities Act stated:

"(1) It is the clear purpose of Act No. 220, Pub. Acts 1923 (as amended), to prevent an offering to the public of all forms of securities and investment contracts without first giving the commission an opportunity to investigate the venture and determine whether sound policy justifies permitting the promoters to offer for sale to the investigating public, the kind and character of securities proposed; also, to prevent exploitation of the public by the unscrupulous salesman."

The Supreme Court of Rhode Island in construing a similar statute stated the following in the case of *State vs. Pullen*, 192 Atlantic, page 473, text 476:

"(3) In this State that statute provides some measure of regulation and control, at least of the open securities market. To some extent also it reverses the old rule of the law merchant and warns the seller of securities that he must beware what he offers for sale in that market. It does not impose upon

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the seller the liability of an insurer of the security which he offers for sale, but merely requires him to make a disclosure of the nature of the security and the substantial facts concerning it and its sponsors in orders to enable the division of banking and insurance to determine its entitlement to registration in this State. The extent of the information required to be filed concerning the security to be offered for sale is left very largely to the discretion of the division."

It is obvious that Securities Acts, otherwise known as Blue Sky Laws, were enacted for the purpose of protecting the investing public from fraudulent investments and securities of little or no value. The burden is directly placed under the provisions of the particular statute in force in this State, to pass upon the question of whether or not the enterprise or business of the issuer is based upon sound business principles. While the requirements of the Commission should not be unreasonable and unduly burdensome on legitimate business enterprises, there is a definite duty to enforce compliance with requirements which sound business principles necessarily demand.

In the case of *Agnew vs. Daugherty*, decided by the Supreme Court of California and reported in 209 Pacific, page 34, the issuer of certain trust interests, determined by the Court to be securities, sought to prohibit the Commissioner of Corporations from requiring it to register such securities on the ground that that portion of the Securities Act authorizing the Commissioner to determine whether a proposed plan of business is fair, just and equitable before issuing of permit for the sale of securities, was unconstitutional. In passing upon the contention the Court said:

"All the objections to the validity of the law urged by the petitioner here were considered and determined in that case to be without merit, except the following, namely, that said act allows the commissioner to issue a permit by the following clause:

"If he finds that the proposed plan of business of the applicant is not unfair, unjust or inequitable, that it intends to fairly and honestly transact its business, and that the securities that it proposes to issue and the methods to be used by it in issuing or disposing of them are not such as, in his opinion, will work a fraud upon the purchaser thereof, the commissioner shall issue to the applicant a permit authorizing it to issue and dispose of securities, as therein provided, in this state, in such amounts and for such considerations and upon such terms and conditions as the commissioner may in said permit provide. Otherwise he shall

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deny the application and refuse such permit and notify the applicant in writing of his decision.'

"He claims that this gives power to the commissioner to act arbitrarily and authorizes him to deny the applicant the equal protection of the law, contrary to the Fourteenth Amendment to the Constitution of the United States and to section 11, article 1, of our Constitution, requiring that 'all laws of a general nature shall have a uniform operation'. The passage in the above quotation from the statute which allows the commissioner to issue a permit authorizing the applicant to sell his securities 'upon such terms and conditions as the commissioner may in said permit provide' must be read in connection with the context, which provides that the commissioner must inquire into the method of doing business, and shall ascertain if the same is fair, just, and equitable, and that the methods used in disposing of them would not work a fraud upon the purchasers thereof. The terms and conditions to be prescribed in the permit must not be such as would make a greater burden than is consistent with safety and security. The condition imposed must be such as could fairly be said to be necessary to accomplish that purpose. If the commissioner should refuse to issue a permit, except upon conditions which would be unjust, unfair, or inequitable to the applicant, doubtless he would have the right to have such permit revised and reformed so as to make it equitable and fair, but we cannot assume that he will impose such conditions in advance of his action."

The objection has also been made that the construction placed upon Section 8 of the Securities Act by the Commission has a tendency to stifle the efforts of a small business to obtain needed capital with which to begin operations. The necessity for obtaining capital with which to begin a business enterprise is fully taken care of in Section 4, Subdivisions (j) and (k) of Chapter 17253, Laws of Florida, Acts of 1935. Under these statutory provisions, twenty-five subscriptions for the shares of capital stock in a corporation prior to incorporation and after incorporation the sale of \$10,000.00 worth of securities to not exceeding twenty persons, are transactions specifically exempt from the operation of the Securities Act.

It is my opinion that the second question propounded by you (supra) should be answered in the affirmative. There is ample authority in the Florida Securities Act for the Securities Commission to require an issuer seeking to register securities by qualification to own assets as a prerequisite to granting a certificate of qualification.

SECURITIES COMMISSION

March 19, 1937.

SECURITIES ACT—UNDIVIDED INTEREST IN OIL AND GAS
ROYALTY CONSTITUTES SECURITY*Dear Sirs:*

This is in reply to your request for my opinion as to whether or not an undivided interest in an oil and gas royalty is a security within the definition of the Uniform Sale of Securities Act.

An oil or gas royalty is an interest reserved usually under an oil lease on a portion of the total production of oil and gas from the tract. The customary interest reserved under such a royalty is one-eighth of the total production. Of recent years there has been considerable trading in oil royalties. The prospectus which you enclose with your letter deals with the offering for sale of undivided interest in such an oil and gas royalty, the fractional interest offered being one-six hundredths of the whole royalty interest.

The question to be determined is whether or not such fractional interest in an oil royalty constitutes a security within the definition of the Uniform Sale of Securities Act. Section 1 of Chapter 17253, Acts of 1935, amending Chapter 14899, Acts of 1931 defines a security as:

"A certificate of interest in an oil, gas, petroleum, mineral, or mining *title* or lease." (*Italics ours.*)

The word "title" hereinabove underscored was added to the definition by the amending act of 1935. It is clear that a royalty interest is an oil, gas, petroleum and mineral title. The form of deed which you also enclose is essentially a certificate of interest in such a title.

In passing on a similar question, I stated in an opinion dated July 23, 1935 the following:

"The deed further recites that the grantee shall own such undivided interest 'in the above described land and in all oil, gas and other minerals in and under said lands, together with a like undivided interest in all bonuses, royalties and rentals received as provided for in present or future contracts and/or oil, gas and mineral leases covering the above described lands, this deed being subject to such contracts and/or leases executed by the party of the first part.'

It is my opinion that such deed and contract constitutes a security within Section 1 of the said Act of 1935, inasmuch as it is definitely a right to participate in or a certificate of interest in an oil, gas, petroleum, mineral or mining title or lease; or

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it constitutes an interest in or under a profit sharing or participation agreement or scheme."

It is, therefore, my opinion that such a fractional interest in an oil or gas royalty constitutes a security within the definition set forth in Section 1, Chapter 16253, Acts of 1935.

October 16, 1937.

SECURITIES—CONSTRUCTION OF—SECTION 4 K OF CHAPTER
17253, ACTS OF 1935

Dear Sir:

This is in reply to your letter of October 5, in which you request my opinion as to the proper construction of Section 4 k of Chapter 17253, Laws of Florida, Acts of 1935, which reads as follows:

"(k) The sale of its shares by any corporation organized under the laws of this state when the total number of shareholders does not and will not after such sale exceed twenty and the total face amount or the total sale price of such shares does not exceed ten thousand dollars; provided, that such securities are issued and disposed of for the sole account of the issuer in good faith and not for the purpose of evading the provisions of this Act."

You inquire whether the above provision applies only to corporations organizing with capital of \$10,000 or less and as to whether it would be permissible for a corporation organized under the laws of this State, authorized to issue \$50,000 in capital stock to sell up on \$10,000, to not exceeding twenty persons, without qualifying under the Securities Act.

It is my opinion that this provision does not apply only to corporations organizing with a capital of \$10,000 or less, but that the sale of \$10,000 worth of the capital stock to not more than twenty persons would be an exempt transaction. Such a corporation, however, would be required to qualify before it would be authorized to sell any additional amount.

February 20, 1937.

SECURITIES—MATURITY OF PROMISSORY NOTES
DENOTES IF EXEMPT

Dear Sir:

This is in reply to your letter of February 15th in which you request my opinion as to whether a promissory note which matures in

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twelve months, subject to being renewed at the end of each twelve month period for a period of five years, is an exempt security within the provisions of Section 3(1) of Chapter 17253, Laws of Florida, Acts of 1935.

Section 3(1) of Chapter 17253 reads as follows:

"Negotiable promissory notes or commercial paper; provided, that such issue of notes or commercial paper matures in not more than twelve months from date of issue and shall be issued within three months after the date of sale."

I call yur attention to the following definition of the word "maturity" contained in Words and Phrases, Third Series, Volume 5, page 36, which reads as follows:

"'Maturity', when applied to commercial paper, means the time when the paper becomes due and demandable; that is, the time when an action can be maintained thereon to enforce payment. *Ardmore State Bank vs. Lee*, 150 P. 903, 905, 61, Okl. 169."

It would seem that the essential test of when a promissory note "matures" is the time when an action may be maintained to require payment thereon. If the promissory note contains a provision that it can be renewed at the option of the maker for a period extending beyond twelve months, it would not in my opinion be an exempt security.

January 16, 1937.

UNIFORM SALE OF SECURITIES—NOT EXEMPT TRANSACTIONS

Dear Sirs:

You request my opinion as to whether or not the following state of facts should be construed as an exempt transaction under Section 5 of Chapter 14899, Acts of 1931, as amended. The New Amsterdam Casualty Company owns about ninety-eight per cent. of the capital stock of the United States Casualty Company. The New Amsterdam Casualty Company to dispose of about 150,000 shares of United States Casualty Company stock and plans to offer the opportunity to purchase same first to its own stockholders and then to the general public. The proceeds derived from the sale of said stock are to be deposited in the treasury of the New Amsterdam Casualty Company and become assets of that company.

It is contended on behalf of New Amsterdam Casualty Company that this is an "exempt transaction" under the Uniform Sale of Securities Act. The following is Section 5 (c) of the statute:

SECURITIES COMMISSION

"The sale of securities when made by or on behalf of a vendor not the issuer or underwriter thereof who, being a bona fide owner of such securities, disposes of his own property for his own account, and such sale is not made, directly or indirectly, for the benefit of the issuer or an underwriter of such security, or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this Act."

Under the facts as hereinabove summarized I do not believe that this is an exempt transaction as defined in the statutory provision above set forth. I fail to see that there would be any substantial distinction between the offering of such stock by the United States Casualty Company and by the New Amsterdam Casualty Company. The interest of the public would be identical in either case. The same reasons for requiring the registration of the stock if it were offered for sale to the public directly by the United States Casualty Company exist when the stock is offered by the New Amsterdam Casualty Company. The intent of the Legislature in enacting the statutory provision above set forth was clearly to exempt bona fide transactions of a private nature and not to authorize the public offering of large blocks of securities without complying with the provision of the statute designed to protect the interest of the public.

SECTION 31

SOIL CONSERVATION DISTRICT

September 14, 1937.

DUTIES OF STATE SOIL CONSERVATION COMMITTEE—CHAPTER
18144, ACTS OF 1937, SEC. 11*Dear Sir:*

I have your letter of September 11th, relative to the "Soil Conservation Districts Law." You state that Section 4 of said Act establishes a State Soil Conservation Committee consisting of the Director of the Florida Experiment Station, Vice Director of the Agricultural Extension Service, and the Soil Conservationist of the College of Agriculture, University of Florida, and that there has been filed with this Committee a petition dated September 2, 1937, signed by some fifty-six citizens, petitioning for the creation of a Soil Conservation District in Jackson and Holmes Counties, in accordance with the Act referred to. That under the terms of the Act the State Committee is required to issue notice of hearing within thirty days after the filing of this petition, and such hearing, in order to accomplish the purpose intended, would necessarily have to be held within or near the area out of which it is proposed to create a soil conservation district, and that this would require the incurrence of travelling expenses by the Committee in holding such hearing in or near Graceville, Florida.

You further state:

"The Legislature made no appropriation, so far as we can determine, for carrying out the provisions of this Act and the question confronting us at this time is what should be the course of procedure by the members of the State Conservation Committee under such circumstances. The act, apparently, makes it mandatory upon the committee to do certain things and perform certain duties which require the expenditure of money and no money has been provided by the state for this specific purpose. Would the members of the committee, under such circumstances, be guilty themselves of a violation of the law if they failed to carry out the measures with which they are charged by the Act? Or should they take the position that the provisions of the Act are non-effective insofar as discharge of duties requiring expenditures are concerned?"

I have carefully examined the above mentioned Act, and I agree with you that the Legislature made no appropriation in this Act to carry out its provisions, and I am of the opinion that you could not incur any expenses that would be chargeable to any State fund. Unless Section 11 of the Act presents a solution of the problem, I do not see how your committee could function.

SOIL CONSERVATION DISTRICT

It is provided in Section 11:

"As a condition to the extending of any benefits under this Act to, or the performance of work upon, any lands not owned or controlled by this State, or any of its agencies, the supervisors may require contributions in money, services, material, or otherwise to any operations conferring such benefits * * *."

It might be possible to persuade the persons who have requested the creation of a Soil Conservation District to put up a sufficient amount of money to conduct the preliminary hearings required by the Act. After that had been done and the supervisors had been chosen, they could then probably carry on under the Section of the Act last above quoted.

SECTION 32

STATE BOARD OF ADMINISTRATION

April 21, 1937.

BONDS AND JUDGMENTS

PURCHASE, SALE AND EXCHANGE OF—FLAGLER COUNTY—
KANNER BILL*Dear Sir:*

I have your communication of April 16, 1937, with letter attached, from the Clerk of the Circuit Court of Flagler County. You desire me to advise whether the Board of Administration may, at the request of the county, purchase, under the provisions of Chapter 15891, Laws of Florida, Acts of 1933, commonly known as the Kanner Bill, bonds of a special road and bridge district, properly operating under the terms and provisions of said Kanner Bill, at a price of 100 flat. I assume, for the purpose of this opinion, that the price at which these bonds are offered, corresponds with the par value thereof.

I am of the view that such bonds may not be purchased, because the provisions of said Chapter 15891 authorize the purchase of such securities at prices greatly below the par value thereof. I am unable to say that an offered price of par would be a price greatly below the par value of the securities in question. I, therefore, have to advise that such a purchase would not, in my opinion, be authorized.

June 22, 1938.

INVESTMENT OF FUNDS—HILLSBOROUGH COUNTY

Dear Sir:

This is in reply to your letter of today, enclosing copy of a resolution of the Board of County Commissioners of Hillsborough County, requesting the Board of Administration to purchase, as an investment for the interest and sinking fund of the Hillsborough County county-wide Hard Surface Road Bonds, \$55,000 of Hillsborough County Progress Highway Refunding Bonds.

At the Board of Administration meeting today, the Board agreed to make the purchase at par, subject to the written opinion of the Attorney General, as to the legality of the purchase. You have orally advised that Progress Highway Bonds of Hillsborough County are being currently quoted at par, and that the interest and sinking fund of the Hard Surface Road Bonds has ample funds with which to make the investment and retain adequate funds to meet current maturities. Therefore, I am of the opinion that the Board of Administration is legally authorized to comply with the provisions of this resolution.

STATE BOARD OF ADMINISTRATION

June 29, 1937.

DADE COUNTY—HOUSE BILL 1644, CHAPTER 17727, ACTS OF 1937

Dear Sir:

With your letter of June 22, 1937, you enclosed copy of resolution adopted by the Board of County Commissioners of Dade County on June 8, 1937, together with verified copy of House Bill 1644, enacted by the 1937 Legislature, which became a law without the Governor's approval, and was filed in the office of the Secretary of State on June 14, 1937. The resolution in question requests the Board of Administration to purchase \$6,000 City of Miami bonds from the sinking fund of Special Road and Bridge District 3, of said county, using for this purpose countywide interest and sinking fund monies of Dade County. You request to be advised whether the Board of Administration, under the provisions of said Act, would be authorized to make this contemplated purchase.

I do not express any opinion as to the constitutional validity of the House Bill in question, as it is my opinion that the Board of Administration would be authorized to follow the terms and provisions of a presumptively valid law, unless and until that law is declared invalid by some court of competent jurisdiction. An examination of the House Bill in question shows that it purports to authorize the State Board of Administration, by and with the consent of the governing body of the taxing unit whose investments are sought to be involved, to accept re-funding bonds in exchange for and in lieu of "and to sell or trade any investment held in the interest fund accounts of any taxing unit in any county having a population of not less than 180,000 according to the last preceding State census, whose interest and sinking fund are administered by the State Board of Administration." Subject to a proper and reasonable price being paid for these bonds, I am of opinion that under the provisions of this Act, the Board of Administration, absent the holding of some court of competent jurisdiction, that the law in question is invalid, would be authorized to comply with the provisions of the resolution, copy of which you have furnished me.

August 30, 1937.

CHAPTER 16805, 1935 ACTS—MANATEE COUNTY

Dear Sir:

This is in response to your letter dated today, referring to my opinion of August 21, 1937.

It is my opinion that if the Board of Administration sold bonds pursuant to the provisions of the above statute, it would not be authorized to reinvest the proceeds thereof in bonds accepted in

STATE BOARD OF ADMINISTRATION

payment of taxes pursuant to the provisions of Chapter 16252, Laws of Florida, Acts of 1933 (Futch Bill). See my opinion bearing date June 11, 1935, at page 183 of the 1935-1936 Report of the Attorney General.

September 15, 1937.

CHAPTER 18038, ACTS OF 1937—PURCHASE OF BONDS—
PASCO COUNTY

Dear Sir:

Your letter of September 8th encloses copy of resolution of the Board of County Commissioners of Pasco County, bearing date of September 1, 1937, and requests my written opinion as to whether or not the Board of Administration is authorized by Chapter 18038, Acts of 1937, to purchase bonds which were accepted in payment of taxes under the terms of Chapter 15054, Acts of 1931, as requested by the aforementioned resolution.

Chapter 18038 applies to counties having a population within certain limits, and Pasco County is included within the scope of the Act. It authorizes the custodians of bonds accepted in payment of taxes pursuant to Chapter 15054, Acts of 1931, and the custodians of refunding bonds exchanged therefor, to sell such securities to the interest and sinking funds of the respective issues, at a price which, when added to the interest received thereon, will equal the face amount of the bonds purchased.

The resolution of the Board of County Commissioners of Pasco County recites that the State Treasurer is custodian of certain described bonds accepted in payment of taxes pursuant to the above mentioned statute. The answer to the question of whether or not the Board of Administration may purchase these bonds, or refunding bonds exchanged therefor, is entirely dependent upon the condition of the interest and sinking fund from which the money to make the purchase would be drawn. Any money in an interest and sinking fund of a particular issue of bonds over and above the amount needed to meet past due and current interest, principal and sinking fund requirements, may be used for the purchase of bonds of that issue from the aforementioned closed account, at the price specified in said Act and in said resolution.

September 15, 1937.

CHAPTER 18038, ACTS OF 1937—PURCHASE OF BONDS—
PASCO COUNTY

Dear Sir:

Your letter of September 8th encloses copy of resolution of the Board of County Commissioners of Pasco County, bearing date of Sep-

STATE BOARD OF ADMINISTRATION

tember 1, 1937, and requests my written opinion as to whether or not the Board of Administration is authorized by Chapter 18038, Acts of 1937, to purchase bonds which were accepted in payment of taxes under the terms of Chapter 16252, Acts of 1933, as requested by the aforementioned resolution.

Chapter 18038 applies to counties having a population within certain limits, and Pasco County is included within the scope of the Act. It authorizes the custodians of bonds accepted in payment of taxes pursuant to Chapter 16252, Acts of 1933, and the custodians of refunding bonds exchanged therefor, to sell such securities to the interest and sinking funds of the respective issues, at a price which, when added to the interest received thereon, will equal the face amount of the bonds purchased.

The resolution of the Board of County Commissioners of Pasco County recites that the Clerk of the Board is custodian of certain described bonds accepted in payment of taxes pursuant to the above mentioned statute. The answer to the question of whether or not the Board of Administration may purchase these bonds, or refunding bonds exchanged therefor, is entirely dependent upon the condition of the interest and sinking fund from which the money to make the purchase would be drawn. Any money in an interest and sinking fund of a particular issue of bonds, over and above the amount needed to meet past due and current interest, principal and sinking fund requirements, may be used for the purchase of bonds of that issue from the aforementioned closed account, at the price specified in said Act and in said resolution.

I am returning the papers you enclosed.

October 20, 1937.

CHAPTER 17889, LAWS OF FLORIDA, ACTS OF 1937

Dear Sir:

Your letter of September 27th encloses copy of the above mentioned Act, and also certified copy of resolution of the Board of County Commissioners of Hillsborough County, dated September 10, 1937.

You ask to be advised as to whether or not the Board of Administration is authorized to invest Road bond interest and sinking fund monies in shares of Building and Loan Associations, under the provisions of the above mentioned Act.

The aforementioned resolution requests the Board of Administration to invest interest and sinking funds in stock of the First Federal Savings & Loan Association of Tampa and the LaFayette Federal Savings & Loan Association of Tampa.

STATE BOARD OF ADMINISTRATION

Chapter 17889 states that "the Board of Administration may invest any funds to the credit of any county or special road and bridge district in the hands of the State Treasurer, as County Treasurer Ex Officio, by and with the consent and approval of the Board of County Commissioners or other governing body of such county or special road and bridge districts, in * * * investment share accounts of any Federal Savings & Loan Association chartered under the laws of the United States of America, doing business in the State of Florida, and in the shares of any domestic building and loan association, which is a member of the Federal Home Loan Bank system."

If the First Federal Savings & Loan Association of Tampa and the Lafayette Federal Savings & Loan Association of Tampa are federal savings and loan associations chartered under the laws of the United States of America, the Board of Administration is authorized to invest sinking funds in the investment shares of these associations. The Board of Administration's authority in this matter is discretionary, and not mandatory.

October 21, 1937.

CHAPTER 17958, ACTS OF 1937—MONROE COUNTY

Dear Sir:

I have your letter of October 15th, enclosing certified copy of resolution of Board of County Commissioners of Monroe County, requesting the Board of Administration to purchase certain bonds for retirement pursuant to the terms of Chapter 17958, Acts of 1937.

That Act authorizes the Board of Administration to use gasoline tax funds to the credit of Monroe County, for the purpose of purchasing certain refunding bonds of Monroe County. The refunding bonds described were not issued for road and bridge purposes. Such a purchase could not have been made pursuant to Chapter 14486, Acts of 1929 (Board of Administration Act), or pursuant to Chapter 15891, Acts of 1933 (Kanner Bill).

The resolution recites that the Board of County Commissioners is desirous of retiring certain of the above mentioned refunding bonds, and directs the Board of Administration to purchase certain of them at a price of 71 plus accrued interest. The resolution directs that money in the interest and sinking fund of Monroe County bonds, administered by the Board of Administration, be used to make the purchase. It also directs that if such funds prove insufficient, the remaining amount necessary to complete the purchase at the above mentioned price, be transferred from the Kanner Bill account to the interest and sinking fund.

STATE BOARD OF ADMINISTRATION

You ask my opinion as to whether or not the Board of Administration is authorized or required to make the purchase provided for in the resolution. The constitutionality of Chapter 17958 is doubtful, but I am of the opinion that the Board of Administration is authorized to comply with its terms, unless and until this Act has been declared unconstitutional by a court of competent jurisdiction. Accordingly, the purchase may be made, but solely from gasoline tax funds. The provisions of the Act are not mandatory, and the Board of Administration may exercise its discretion in determining whether or not to comply with its provisions. If the Board of Administration makes the purchase, the refunding bonds received should not be cancelled, but should be held as investments. The resolution seems to contemplate that the purchase by the Board of Administration will have the effect of retiring the bonds, but such is not the case, for Chapter 17958 confers no authority upon the Board of Administration to cancel bonds purchased pursuant to that Act.

I am returning the papers you enclosed.

December 31, 1937.

OKEECHOBEE COUNTY—PURCHASE OF BONDS UNDER KANNER
BILL—CHAPTER 17960, ACTS OF 1937

Dear Sir:

According to your letter of December 31, 1937, the Board of Administration advertised for offers of Okeechobee County bonds under Chapter 15891, Acts of 1933 (Kanner Act). Pursuant to such advertisement, \$75,000 of Okeechobee bonds were offered at a price of 82 flat. The Board of County Commissioners has, by resolution, recommended the purchase of these bonds by the Board of Administration.

Chapter 17960, Acts of 1937, provides that 253/1143 of all gasoline tax funds credited to Okeechobee County, shall be remitted to the Clerk of the Circuit Court of that county. The validity of this Act has been called into question in the case of Kerce vs. Lee, now pending in the Circuit Court of Leon County, and in the case of United States, ex rel. Bessemer Properties, Inc. vs. Fred P. Cone, et al.

Your letter states further that if the above mentioned purchase is made, the Board of Administration will still have ample funds to the credit of Okeechobee County, to comply with said Chapter 17960, in the event that it is held valid.

You ask to be advised as to whether or not the Board of Administration can legally use Kanner Act funds to purchase the above mentioned bonds, and I beg to advise that the Board of Administration is legally authorized to use the funds for that purpose. The Kanner Act

STATE BOARD OF ADMINISTRATION

authorizes, but does not require, the Board of Administration to purchase bonds offered for sale pursuant to it, and the acceptance or rejection of the lowest offering is a matter resting in the Board's discretion.

December 31, 1937.

PASCO COUNTY—CHAPTER 18038, ACTS OF 1937—PURCHASE OF
BONDS BY BOARD OF ADMINISTRATION

Dear Sir:

From your letter of December 21, 1937, it appears that W. V. Knott, State Treasurer, received certain Pasco County bonds which had been accepted in payment of taxes pursuant to Chapter 15054, Acts of 1931. That Act provides that bonds accepted in payment of taxes shall be forwarded to the State Treasurer, "who shall keep and hold the same for the account of the parties in interest, as custodian thereof." Chapter 18038, Acts of 1937, an Act applying to counties having a population between certain limits, provides that the custodian of bonds accepted in payment of taxes shall, upon approval of the Board of County Commissioners, exchange them for refunding bonds. Pasco County comes within the classification of the Act, and the State Treasurer made such exchange pursuant to resolution of the Board of County Commissioners of that county. Chapter 18038 also authorizes the custodian to sell such refunding bonds to the respective interest and sinking funds, at a price which can be determined by mathematical calculation.

You ask to be advised as to whether or not these refunding bonds can be sold to the Board of Administration at a price of par less the amount of interest received by the State Treasurer on these bonds.

Had Chapter 18038 not been enacted into law, the State Treasurer would not have had authority to sell bonds accepted in payment of taxes pursuant to the aforementioned 1931 Act, for that Act required the Treasurer to "hold same," and the Board of Administration would have had no authority to purchase bonds which the Treasurer was unauthorized to sell. See my opinion dated June 11, 1936, at page 183, of the 1935-1936 Attorney General's Report. This is equally true of refunding bonds taken by the State Treasurer in exchange for the bonds accepted in payment of taxes. Accordingly, if the State Treasurer has power to sell these refunding bonds, and the State Board of Administration has power to buy them, such power must arise by virtue of authority conferred by Chapter 18038, rather than by virtue of Chapter 14486, Acts of 1929 (Board of Administration Act), or other general laws.

In the case of *Kerce vs. Lee*, now pending in the Circuit Court of Leon County, a temporary restraining order has been entered, enjoining

STATE BOARD OF ADMINISTRATION

J. M. Lee, as Comptroller of the State of Florida, and as Secretary of the State Board of Administration, from issuing a warrant for the disbursement of any money to, or for the account of, Pasco County, under and by virtue of any special or local Act, and further enjoining him from paying out any funds under any special or local Act which purports to authorize the expenditure of such funds for any purpose contrary to the purposes provided in Chapter 14486, Acts of 1929, and Chapter 15659, Acts of 1931. As long as this order remains in force, it is not clear that you have authority to issue a warrant for the purchase of these bonds, pursuant to Chapter 18038, and I am, therefore, of the opinion that, so long as the above mentioned suit remains in its present status, the purchase of these bonds cannot be consummated. In the event of a change in the status of the suit, the answer to your inquiry would be dependent upon the nature of the court's ruling.

March 16, 1938.

PASCO COUNTY—CHAPTER 18038, ACTS OF 1937—PURCHASE OF
BONDS BY BOARD OF ADMINISTRATION

Dear Sir:

In two separate opinions, each dated September 15, 1937 I held that the State Treasurer was authorized to sell certain bonds to the Board of Administration at the price provided for in Chapter 18038 and that the Board of Administration had authority to purchase such bonds at that price, pursuant to the above mentioned act. I expressed no opinion as to the constitutionality of the act and stated that administrative officers were authorized to comply with the provisions of a legislative enactment unless and until same had been declared unconstitutional by a court of competent jurisdiction.

On December 21, 1937 you transmitted a copy of the court's injunction order in the case of Kerce vs. Lee and asked for an opinion as to whether or not, in view of this order, the Board of Administration was authorized to purchase the aforementioned bonds. On December 31, 1937 I rendered an opinion stating that as long as the injunction order remained in force it was not clear that the Comptroller would have authority to issue a warrant for the purchase of these bonds pursuant to Chapter 18038.

Today I received a letter from you dated March 15, 1938 enclosing copy of an order entered in the aforementioned Kerce suit on March 9, 1938 which states in substance that neither the Comptroller, the State Board of Administration nor anyone else is enjoined from carrying out the provisions of Chapter 18038 and that it was not the intention of the injunction order as originally issued or as subsequently modified to in any manner enjoin or restrain any operation of this act.

STATE BOARD OF ADMINISTRATION

You ask to be advised as to your authority to issue a warrant for the purchase of these bonds. I am of the opinion that the court's order dated March 9, 1938 removed the obstacle which prevented compliance with the aforementioned act and that you are authorized to issue a warrant for the purchase price.

I express no opinion as to the constitutionality of the aforementioned act as I am of the opinion that an administrative officer is authorized to comply with the provisions of the legislative act unless and until same has been declared unconstitutional by a court of competent jurisdiction.

I am returning the court order you enclosed.

September 10, 1938.

PURCHASE OF BONDS—LEE COUNTY

Dear Sir:

Your letter bearing date of September 1, 1938, encloses copy of resolution of the Board of County Commissioners of Lee County, dated August 17, 1938, and also copy of letter from County Attorney William J. Wood, to you, dated August 22, 1938.

From your letter, and the enclosures, it appears that:

1. Among the bonds accepted in payment of Lee County taxes pursuant to Chapter 16252, Acts of 1933, (Futch Act) were \$10,000 Lee County Road and Bridge bonds.

2. In 1936, distribution of all bonds so accepted, was made pursuant to Section 7 of the Futch Act, and as a result the County Commissioners received the \$10,000 of bonds above mentioned.

3. Chapter 18633, Special Acts of 1937, validated the previously mentioned distribution.

4. The County Commissioners exchanged the \$10,000 of bonds for a like amount of Refunding bonds dated January 1, 1938.

5. William J. Wood, as attorney for the Board of County Commissioners, offered the Refunding bonds to the Board of Administration, and the Board of County Commissioners had requested their purchase at a price of par.

Your letter requests my opinion as to whether or not the Board of Administration has authority to make this purchase, assuming that the price is not above the market price, and assuming that sufficient funds for investment purposes are available to make the purchase.

STATE BOARD OF ADMINISTRATION

Upon the basis of the above facts, I am of the opinion that the Board of Administration is authorized to purchase the bonds. Bonds of this type are eligible for purchase as investments under Section 17 of Chapter 14486, Acts of 1929, (Board of Administration Act). Distribution of the bonds taken for taxes has been made pursuant to Section 7 of the Futch Act, and the Legislature has validated the distribution made.

This opinion is not in conflict with the opinion of my predecessor dated July 11, 1935, (p. 183 of the 1935-36 Attorney General's Report), for in that case, distribution had not been made at the time the bonds were offered for sale.

Remittance of the purchase price should be made to the County Commissioners of Lee County.

March 21, 1938.

PURCHASE OF JUDGMENT INVOLVING ROAD BONDS AND
INTEREST COUPONS UNDER KANNER BILL—
CHARLOTTE COUNTY

Dear Sir:

Your letter of March 10, 1938, states that there was offered to the Board of Administration, pursuant to Chapter 15891 (Kanner Bill), a judgment obtained by * * * against Charlotte County, in United States District Court, Southern District of Florida, No. 3384-T-Civil, involving \$13,000 Charlotte County road bonds and \$14,100 of past due coupons detached from Charlotte County road bonds. You state that this judgment was offered at a price of 75c on the dollar, and you ask to be advised as to whether or not the Board of Administration has legal authority to purchase this judgment out of funds carried in the Kanner Bill account, assuming that such funds are sufficient to purchase same.

I am of the opinion that the Board of Administration is legally authorized to make this purchase, and to make payment therefor upon receipt of a properly executed satisfaction of judgment.

July 7, 1937.

BREVARD COUNTY—CHAPTER 18436, ACTS OF 1937

Dear Sir:

You have requested that I furnish you with a formal written opinion as to whether or not the Board of Administration has legal authority to comply with the terms and provisions of Chapter 18436, Acts of 1937 Legislature.

STATE BOARD OF ADMINISTRATION

This Act purports to authorize, empower, and direct the Board of Administration to sell certain bonds to the purchaser or purchasers that the Board of County Commissioners of Brevard County, Florida, shall by resolution direct, at and for such sum or sums set forth in said resolution.

I express no opinion as to the constitutionality of the Act in question. Presumptively it is valid, and until it is declared invalid by a court of competent jurisdiction, the Board of Administration would be authorized, in my opinion, to comply with its provisions.

SEPTEMBER 9, 1937.

**CHAPTER 17726, ACTS OF 1937—SALE OF BONDS IN INTEREST
AND SINKING FUND—PASCO COUNTY**

Dear Sir:

Your letter of today encloses copy of the above Act, together with certified copy of resolution of Board of County Commissioners of Pasco County, directing the Board of Administration to sell certain bonds in the interest and sinking funds of Pasco County, at a price to equal at least 98 and interest.

Chapter 17726, an Act applying to counties having a certain population, authorizes the Board of Administration to sell or trade any investments held in the interest and sinking fund accounts of such counties, by and with the consent of the Board of Commissioners of the county involved. You advise orally that the population of Pasco County is within the limitations set forth in the Act, and you request my opinion as to whether or not the Board of Administration is authorized, pursuant to said law, to sell certain City of Tampa bonds held in the investment accounts of Pasco County.

I am of the opinion that the Board of Administration is authorized, pursuant to the above mentioned Act and resolution, which are returned herewith, to sell said bonds at the price set forth in the resolution. I express no opinions as to the constitutional validity of Chapter 17726, as I am of the opinion that administrative officers are authorized to comply with the provisions of an Act of the Legislature, unless and until same has been declared invalid by a court of competent jurisdiction.

July 22, 1938.

**SALE OF BONDS IN INTEREST AND SINKING FUND—
GADSDEN COUNTY**

Dear Sir:

Your letter of July 21st quotes from a letter you received from the Clerk of the Circuit Court of Gadsden County, as follows:

STATE BOARD OF ADMINISTRATION

"The Board of County Commissioners instructed me to write and ask you definitely if they can count on the \$10,000 of bonds held by you which the Board bought some years ago, in preparing the budget for the coming year. They expect to sell them for the use of Gadsden County. Please advise."

Your letter states that the Board of Administration holds \$10,000 of Gadsden County Road bonds due in 1947, as investments, which bonds are currently quoted on the market at prices above par.

You ask to be advised if the Board of Administration can sell these bonds and, if so, should the proceeds of the sale be placed in the interest and sinking fund account of Gadsden County and used for debt service, or could the proceeds be legally turned over to Gadsden County.

I am of the opinion that the Board of Administration is legally authorized to sell these bonds at a price of par plus accrued interest, or better. See Attorney General's opinion dated December 13, 1934, found on page 163 of the 1933-34 Attorney General's Report. In the event of sale, the proceeds should be placed in the interest and sinking fund. The Board of Administration would be unauthorized to turn the proceeds over to the county.

August 21, 1937.

CHAPTER 16805, 1935 ACTS—MANATEE COUNTY

Dear Sir:

Your letter of August 20th requests my opinion as to whether or not the Board of Administration may sell certain bonds held by the Board, in the investment accounts of Manatee County and its Special Road and Bridge districts, and reinvest the proceeds of such sales in certain other bonds of Manatee County and its Special Road and Bridge districts, as provided in Section 17 of Chapter 14486, Laws of Florida, Acts of 1929.

Chapter 16805, Laws of Florida, Acts of 1935, is a population Act, which you advise applies to Manatee County. It authorizes the Board of Administration to sell any bonds in the interest and sinking funds of the county, when it appears to the Board that such sale is for the best interest of the particular fund to the credit of which the securities to be sold, are held. It also authorizes reinvestment of the proceeds of such sale as now provided by Section 17 of Chapter 14486, Laws of Florida, Acts of 1929 (Board of Administration Act).

If the county recommends, by resolution, the sale of certain bonds held by the Board of Administration, as investments for various county-wide and special road and bridge bond accounts, you are authorized to

STATE BOARD OF ADMINISTRATION

make such sale, provided that it appears to the Board of Administration that such sale is to the best interest of the particular accounts holding such bonds as investments. The proceeds of any such sale of bonds may be reinvested in countywide and special road and bridge district bonds of Manatee County if, at the time of the reinvestment, the account contains a sufficient amount of money to meet current interest and sinking fund requirements.

I express no opinion as to the constitutionality of the above mentioned Act, as I am of the opinion that administrative officers are authorized to comply with the provisions of a legislative Act, unless and until same has been declared unconstitutional by a court of competent jurisdiction.

August 30, 1937.

EXCHANGE OF BONDS—OSCEOLA COUNTY

Dear Sir:

Your letter of August 25th enclosed copy of Chapter 18758, Laws of Florida, Acts of 1937, and certified copy of a resolution of the Board of County Commissioners of Osceola County, dated August 21, 1937.

The above mentioned law authorizes the Board of Administration, with the consent of the Board of County Commissioners of Osceola County, to sell or trade any investments held in the interest and sinking fund accounts of Osceola County. The resolution requests the Board to exchange \$20,000 of Special Road and Bridge District No. 2 refunding bonds, held in the countywide interest and sinking fund investment account, for a like amount of Osceola countywide bonds. Upon consummation of the exchange, the Board of Administration is requested to cancel the bonds received.

Your letter requests my written opinion as to whether or not the Board of Administration is authorized to make the exchange of securities requested in the above mentioned resolution. If, as is stated in the resolution, the Special Road and Bridge District No. 2 bonds are held in the investment account of the countywide interest and sinking fund, I am of the opinion that you are authorized to make the requested exchange and cancel the bonds received. I express no opinion as to the constitutionality of Chapter 18758, as I am of the opinion that administrative officers are authorized to comply with the provisions of a legislative enactment unless and until same has been declared invalid by a court of competent jurisdiction.

STATE BOARD OF ADMINISTRATION

October 21, 1937.

PINELLAS COUNTY—CHAPTER 18791, ACTS OF 1937—EXCHANGE
OF INVESTMENTS*Dear Sir:*

Your letter of October 12th encloses copy of the above Act, together with certified copy of resolution of Board of County Commissioners of Pinellas County, dated September 21, 1937, and requests my opinion as to whether or not the Board of Administration is authorized to make the trade requested in the aforementioned resolution.

Chapter 18791 provides that the Board of Administration is authorized, with the consent of the Pinellas County Board of County Commissioners, to sell or trade any investments held in the interest and sinking fund accounts of Pinellas County. The resolution authorizes the Board of Administration to exchange \$10,000 of Town of Pass-a-Grille bonds held in the investment account of Special Road and Bridge District No. 1, for \$10,000 of Pinellas County Road and Bridge Refunding bonds. Both the refunding bonds and the Pass-a-Grille bonds are described with particularity.

It is my opinion that the Board of Administration is authorized to comply with the provisions of this resolution. I express no opinion as to the constitutionality of Chapter 18791, as I am of the opinion that administrative officials are authorized to comply with the provisions of a legislative enactment unless and until same has been declared unconstitutional by a court of competent jurisdiction.

December 8, 1937.

BOARD OF ADMINISTRATION—EXCHANGE OF BONDS—CHAPTER
18791, ACTS OF 1937—PINELLAS COUNTY*Dear Sir:*

A resolution of the Board of County Commissioners of Pinellas County, dated September 22, 1937, requests the Board of Administration to exchange \$30,000 of bonds held in various interest and sinking fund accounts of Pinellas County and its special road and bridge districts, for a like amount of bonds accepted in payment of taxes under Chapter 16252, Laws of Florida, Acts of 1933 (Futch Bill). The resolution provides further that upon such exchange being authorized by the Board of Administration, the \$30,000 of bonds now in the possession of the Board of Administration, be cancelled.

You ask to be advised as to whether or not the Board of Administration is authorized to comply with the terms and provisions of Chap-

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ter 18791, Acts of 1937, by exchanging the securities are requested in the aforementioned resolution.

The above mentioned statute authorizes the Board of Administration to sell or trade any investments held in the interest and sinking fund accounts of Pinellas County and its road and bridge districts. However, this Act does not authorize the Clerk of the Circuit Court to trade bonds taken in settlement of taxes pursuant to Chapter 16252, Acts of 1933 (Futch Bill), and I am of the opinion that the Board of Administration has no authority to make the exchange contemplated by this resolution. See my opinion dated September 19, 1934, found at page 176 of the 1933-34 Attorney General's Report, and also my opinion dated June 11, 1935, found at page 183 of the 1935-36 Attorney General's Report.

March 11, 1938.

CHAPTER 18425, ACTS OF 1937—CHANGE OF FORM OF
INVESTMENT—BAY COUNTY

Dear Sir:

Your letter of February 26, 1938, advises that you are in receipt of a certified copy of a resolution adopted by the Board of County Commissioners of Bay County, requesting the Board of Administration to exchange \$5,000 Bay County Court House and Jail time warrants, held in the investment account of Bay County Toll Bridge bonds, for a like amount of Bay County Road and Bridge Refunding bonds, together with the sum of \$1100, as adjustment of past due interest due on the warrants.

You ask to be advised as to whether or not this exchange can be made pursuant to Chapter 18425, Acts of 1937.

I am of the opinion that the aforementioned Act authorizes the making of this exchange. I express no opinion as to the constitutionality of the aforementioned Act, as I am of the opinion that administrative officers are authorized to comply with the provisions of a legislative enactment, unless and until same has been declared unconstitutional by a court of competent jurisdiction.

June 29, 1937.

VOLUSIA COUNTY—HALIFAX SPECIAL ROAD AND BRIDGE
DISTRICT—CHAPTER 18961, ACTS OF 1937

Dear Sir:

Your letter of June 17, 1937, advises that the Board of Administration holds in the investment account of the Special Road and Bridge

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District above referred to, \$38,000 par value of Town of Holly Hill Water Works 6% bonds dated July 1, 1926, with January 1, 1933, and subsequent coupons attached, and also \$66,000 par value of Town of Holly Hill 6% paving and drainage bonds dated July 1, 1925, with January 1, 1933, and subsequent coupons attached. These bonds, you advise, were received at the time of the general turnover to the Board of Administration, pursuant to the provisions of Chapter 14486, Laws of Florida, Acts of 1929.

You state that the Town of Holly Hill proposes to refund these issues, the refunding bonds to be dated February 1, 1936, and to mature on the same date in 1966. The refunding bonds will bear interest at the rate of 1% to 5%, and provision is made for the payment of coupons due July 1, 1937, and prior maturing coupons detached from the original bonds, at the rate of 1% for some of the interest maturities and 1½% for some of the other interest maturities; and a cash adjustment will be made for one month's interest from July 1, 1937, to August 1, 1937. You state that you have been furnished with certified copy of resolution adopted by the Board of County Commissioners of the county effected, on June 7, 1937, which requested the Board of Administration to exchange the original bonds so held, for refunding bonds, upon the basis outlined. You further state that the Board of Administration requested me to furnish my opinion as to whether it would be authorized, under the provisions of Chapter 18961, Acts of 1937, to effect this exchange. I assume that the Board of Administration has approved, as a matter of policy, the exchange in question, and I am of opinion that under the provisions of said Chapter, the Board would be authorized to consummate this transaction. I do not express any opinion as to the constitutionality of the Chapter in question, since the Board would be authorized to act in accordance with its provisions unless and until it is declared unconstitutional by some court of competent jurisdiction.

July 8, 1937.

HOUSE BILL NO. 223, CHAPTER 17728, ACTS OF 1937

Dear Sir:

I have your communication dated today, requesting me to furnish your office with our formal written opinion as to whether or not the Board of Administration has legal authority to comply with the provisions of House Bill No. 223, Chapter 17728, Laws of Florida, Acts of the 1937 Legislature.

Section 1 of the aforementioned Act reads as follows:

"Section 1. That the State Board of Administration be, and it is hereby, authorized, by and with the consent of the gov-

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erning body of the taxing unit whose investments are sought to be involved hereunder, to accept refunding bonds in exchange for and in lieu of any investments held in the interest and sinking fund accounts of any taxing unit whose interest and sinking funds are administered by said State Board of Administration."

On several occasions I have rendered opinions to the effect that the Board of Administration does not have authority to surrender bonds of an original issue, held in a sinking fund account, in exchange for refunding bonds of the political division which issued the original bonds. These opinions were based upon my construction of Chapter 14486, Laws of Florida, Acts of 1929, and of Chapter 15891, Laws of Florida, Acts of 1933. See case of State, ex rel., Pinellas County, et al. vs. Sholtz, Governor, et al., 155 So. 736. The Board of Administration is a statutory trustee, and has only such powers as are expressed in the statute. The last two Acts mentioned above do not specifically authorize the Board of Administration to change the form of investment held by a sinking fund account. Since the rendition of my previous opinions, the Florida Legislature enacted House Bill 223, Chapter 17728, which specifically authorizes the exchange of bonds for refunding bonds, under certain conditions. I am of the opinion that the Board of Administration has legal authority to comply with the provisions of that Act.

July 22, 1937.

EXCHANGE OF INVESTMENTS FOR REFUNDING BONDS—
PINELLAS COUNTY

Dear Sir:

I have your letter of July 15th, 1937, in which you state that the Board of Administration has been furnished with certified copy of a resolution adopted by the Pinellas County Board of County Commissioners, requesting the Board of Administration to accept refunding bonds bearing a lower rate of interest in the place of Pinellas County bonds held in the various investment accounts of the County. Your letter states that the refunding agent contemplates making a deduction of 2% for each \$1,000 bond exchanged.

I note that you have also received certified copy of a resolution of the Pinellas County Board of County Commissioners requesting the Board of Administration to accept refunding bonds in lieu of \$20,000 of Town of Gulfport bonds with past due coupons attached, for refunding bonds issued at 75% of the face value of the original bonds, and bearing interest on a graduated scale commencing at 1% per annum; also that the proposed exchange contemplates surrender of the past due interest coupons without payment.

STATE BOARD OF ADMINISTRATION

You request my written opinion as to whether or not the Board of Administration has legal authority:

(1) To allow deduction, or pay such deduction of the refunding agent for making the exchanges.

(2) To accept refunding bonds bearing a lower rate of interest than the original bonds.

(3) To accept refunding bonds having a face value of less than the original bonds.

In the case of *State ex rel Pinellas County vs. Sholtz*, 155 So. 736, the Supreme Court of Florida denied a peremptory writ of mandamus to compel the Board of Administration to exchange bonds held by it for refunding bonds. At the 1937 Legislative Session, House Bill 223 was passed. Section 1 thereof provides as follows:

"That the State Board of Administration be, and it is hereby, authorized, by and with the consent of the governing body of the taxing unit whose investments are sought to be involved hereunder, to accept refunding bonds in exchange for and in lieu of any investments held in the interest and sinking fund accounts of any taxing unit whose interest and sinking funds are administered by said State Board of Administration."

In the case of *Sullivan vs. Tampa*, 134 So. 210, the Supreme Court of Florida held that bonds were refunding bonds within the meaning of Article IX, Section 6 of the Florida Constitution as amended, even though such bonds bore a higher rate of interest than the bonds to be refunded. From the language used in this and other Florida cases, it seems clear that bonds bearing a lower rate of interest than those which they are to replace, are also refunding bonds. Therefore, your second question should be answered in the affirmative.

In the *Sullivan* case the word "refunding" is said to mean, "to fund again or anew; to replace (a fund or loan) by a new fund." It is my opinion that a new bond which is validly issued to replace an old bond is in contemplation of law a refunding bond, even though the par value of the old bond is in excess of the new bond. In refunding programs concessions are sometimes made by the creditors not only as to future maturing interest, but as to principal and past due interest as well. The statute above quoted authorizes the exchange of investments for refunding bonds. There is nothing in that law evidencing an intention to impair or limit this power of refunding to cases where such concessions are absent. I am of the opinion that your third question should be answered in the affirmative, and that the Board of Administration is authorized to surrender the past due coupons at the time of the exchange.

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The grant of the express power to exchange investments for refunding bonds carries with it the implied power to do all things necessary to exercise that power. If the payment of an exchange fee is a necessary incident to the exercise of the power to exchange investments for refunding bonds, such payment may be made or such deduction permitted. I am of the opinion that your first question should be answered in the affirmative.

The statute does not require the exchange of investments for refunding bonds, but merely authorizes it where the consent of the governing body is first obtained. The power authorized by this statute should be exercised in accordance with sound business judgment, and only when deemed to be beneficial to the account which will receive the refunding bonds.

August 16, 1937.

EXCHANGE OF BONDS—PINELLAS COUNTY

Dear Sir:

Your letter of August 2nd encloses copy of resolution of the Board of County Commissioners of Pinellas County, together with copy of Senate Bill 825, Chapter 18788, Laws of Florida, Acts of 1937, and requests my formal opinion as to whether the Board of Administration is authorized to comply with provisions of Chapter 18788, by exchanging securities requested in the resolution.

I have examined the aforementioned chapter, and find nothing therein which authorizes the Board of Administration to exchange bonds. That statute merely authorizes certain disposition to be made of bonds taken in payment of taxes pursuant to the provisions of laws authorizing the payment of the taxes with bonds.

Senate Bill 828, Chapter 18791, Laws of Florida, Acts of 1937, authorizes the Board of Administration, with the consent of the county commissioners of Pinellas County, to sell or trade any investments held in the interest and sinking fund accounts of Pinellas County, or any special road and bridge district therein, administered by said State Board of Administration. If Pinellas County wishes the Board of Administration to take action pursuant to the provisions of this Act, it should pass a resolution setting forth, as to each sinking fund, the particular bonds which it wishes the Board of Administration to release, and the particular bonds which it wishes the Board of Administration to accept in exchange therefor. The resolution enclosed is insufficient in this respect.

If the Board of County Commissioners of Pinellas County adopts a new resolution, requesting the Board of Administration, pursuant to

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said Chapter 18791, to exchange certain described bonds held in a particular interest and sinking fund, for certain other described bonds. I trust you will refer this resolution to this office for further consideration.

August 18, 1937.

**EXCHANGE OF BONDS—CHAPTER 16805, ACTS OF 1935—
MANATEE COUNTY**

Dear Sir:

Your letter of August 14th encloses certified copy of resolution adopted by the Manatee County Commissioners on August 2, 1937. This resolution requests the Board of Administration to exchange certain bonds held in the various investment accounts of Manatee County, for certain bonds held by the Board of County Commissioners of Manatee County. The resolution recites that the requested exchange is authorized by Chapter 16805, Laws of Florida, Acts of 1935. You request my opinion as to whether or not the Board of Administration is authorized by said Act, to make the exchanges requested in this resolution.

I am of the opinion that such exchange is not authorized by the above mentioned statute. It applies to counties having a population of not more than 23,500, and not less than 23,000. With this limitation, it authorizes the Board of Administration to sell for cash, any bonds and other evidences of indebtedness in any of the funds administered by it, and further authorizes the re-investment of the proceeds of such sale, in accordance with Section 17 of Chapter 14486, Laws of Florida, Acts of 1929 (Board of Administration Act). The Act also authorizes the exchange of bonds and other evidences of indebtedness, for refunding bonds and other evidences of indebtedness. In addition to the above, it authorizes the Board of Administration to transfer bonds and other securities from one account to another account, where such transfer would result in a particular account acquiring its own obligations. I find nothing in this statute which authorizes the exchange requested by the aforesaid resolution of the Board of County Commissioners.

September 8, 1938.

**BONDS—SEMINOLE COUNTY—EXCHANGE FOR
REFUNDING BONDS**

Dear Sir:

Your letter of August 16, 1938, encloses copy of a resolution of the Board of County Commissioners of Seminole County, bearing date of August 4, 1938, requesting the Board of Administration to exchange \$6,000 City of Homestead bonds for a like amount of Refunding bonds.

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From your letter it appears that the Refunding bonds will bear interest at a lower rate than the bonds now held.

You ask for my opinion as to whether or not refunding has reached the stage where the Board of Administration would be legally authorized to make the exchange above outlined.

Chapter 17728, Laws of Florida, Acts of 1937, authorizes the State Board of Administration to accept refunding bonds in exchange for any investments held in the interest and sinking fund accounts of the Board of Administration, when consented to by the affected county. The above mentioned resolution evidences the county's consent to the exchange, and I am, therefore, of the opinion that the Board of Administration is legally authorized to comply with the provisions of said resolution.

November 14, 1938.

**EXCHANGE OF BONDS HELD IN INTEREST AND SINKING FUND
FOR REFUNDING BONDS—CHAPTER 17728, ACTS OF
1937—ST. JOHNS COUNTY**

Dear Sir:

From your letter of November 8th and the resolution enclosed therein, it appears that St. Johns County has requested the Board of Administration to accept \$13,000 City of Lakeland refunding bonds in place of a like amount of Lakeland bonds held by the Board of Administration as an investment for St. Johns County Brick Road bonds. You request my opinion as to the authority of the Board of Administration to comply with the provisions of said resolution. Chapter 17728, Laws of Florida, Acts of 1937, reads as follows:

"Section 1. That the State Board of Administration be, and it is hereby, authorized, by and with the consent of the governing body of the taxing unit whose investments are sought to be involved hereunder, to accept refunding bonds in exchange for and in lieu of any investments held in the interest and sinking fund accounts of any taxing unit whose interest and sinking funds are administered by said State Board of Administration.

"Section 2. That this Act shall take effect immediately upon its becoming a law."

The above mentioned statute is ample authority for the making of the requested exchange.

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November 14, 1938.

MUNICIPAL BANKRUPTCY ACT—EXCHANGE OF BONDS—
PINELLAS COUNTY*Dear Sir:*

From your letter of November 8, 1938, it appears that the Board of Administration holds, for the account of Pinellas County, \$20,000 par value Town of Gulfport bonds. The Town of Gulfport has filed a petition for approval and confirmation of a plan for the readjustment of its debts under the provisions of Chapter X of the National Bankruptcy Laws, as amended by Public No. 302 of the 75th Congress, approved August 16, 1937, and an order has been entered by the Judge of the District Court for the Southern District of Florida, fixing November 16, 1938, as the date of the hearing thereon. The County Commissioners of Pinellas County have requested the Board of Administration to execute, for and in behalf of Pinellas County, any refunding agreement, stipulation, or other instrument necessary to accomplish the refunding of these bonds.

My opinion is requested as to the authority of the Board of Administration to comply with the provisions of the aforementioned resolution. Chapter 17728, Laws of Florida, Acts of 1937, authorizes the Board of Administration to accept refunding bonds in exchange for any investments held in the interest and sinking funds administered by such Board, upon obtaining consent of the governing body of the taxing unit whose investments are involved.

It appears that such consent has been obtained in this case, and I am of the opinion that the Board of Administration is authorized to comply with the provisions of the aforementioned resolution and exchange the bonds now held for refunding bonds to be issued under the proposed plan of composition. Inasmuch as the plan of composition has not yet been finally approved by the Court, it would be advisable for the Board of Administration to withhold the actual sending of the bonds in for exchange until it is definitely determined that the plan of composition will become operative.

February 26, 1938.

BONDS—HILLSBOROUGH COUNTY—PREFERENTIAL
PAYMENT UNAUTHORIZED*Dear Sir:*

Your letter of February 24, 1938, encloses certified copy of resolution of Board of County Commissioners of Hillsborough County, dated February 4, 1938, requesting the Board of Administration to pay * * *

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the sum of \$1,267.83, out of funds in the hands of the Board of Administration, to the credit of bonds issued under Chapter 10140, Acts of 1925.

The bond held by Mr. * * * is one of a series issued pursuant to the above mentioned chapter. A mandamus proceeding was brought by him, in the Supreme Court of Florida, to require the County Commissioners of Hillsborough County to levy, and the Tax Assessor to assess, a special tax sufficient to raise the amount of money necessary to pay the bond. Peremptory writ of mandamus was issued December 23, 1937, but apparently the tax was not levied. Insofar as the Board of Administration is concerned, Mr. * * * bond occupies the same status as the other bonds issued pursuant to that law, that are identical with Mr. * * * bond, except for the bond number stamped on its face. I am advised that the Board of Administration does not have sufficient funds in its possession to pay these other bonds also, and I am, therefore, of the opinion that payment of Mr. * * * bond would amount to a preferential payment, which is unauthorized. See my opinion dated July 10, 1935, found on page 178 of the 1935-1936 Attorney General's Report.

March 15, 1938.

PAYMENT OF INTEREST ON MATURITY BONDS—
VOLUSIA COUNTY

Dear Sir:

This is in reply to your letter of March 10, 1938, requesting my opinion as to whether or not the Board of Administration would be protected in paying interest after maturity on certain described bonds of Special Road and Bridge Districts in Volusia County.

I have previously held that the Board of Administration is not authorized to pay such interest on these identical bonds.

See my opinion dated May 24, 1935. I am also of the opinion that such payment cannot be made at the present time. See *State ex rel. Davis vs. Lee*, 156 So. 130, *State ex rel. Center vs. Sholtz*, 156 So. 746, *State ex rel. Crane vs. City of Lakeland*, 156 So. 699.

September 8, 1938.

PAYMENT OF INTEREST COUPONS DETACHED FROM ORIGINAL
BONDS, WITH FUNDS APPROPRIATED FOR PAYMENT OF
REFUNDING BONDS—PINELLAS COUNTY

Dear Sir:

From your letter of August 16, 1938, and the resolutions of the Board of County Commissioners of Pinellas County attached thereto,

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it appears that the county has requested the Board of Administration to pay certain described interest coupons detached from certain original Road bonds issued by the Board of County Commissioners of Pinellas County, with funds which have been duly budgeted and appropriated in the budget of such county, for the purpose of paying interest and principal on certain issues of refunding bonds. You have requested my opinion as to whether or not the Board of Administration is legally authorized to make such payment.

I am of the opinion that funds in the possession of the Board of Administration, which have been duly budgeted and appropriated by the Board of County Commissioners for the payment of interest and principal upon refunding bonds, cannot be used by the Board of Administration for the purpose of paying interest coupons detached from the original bonds.

November 25, 1938.

**PAYMENT OF INTEREST AFTER MATURITY WHERE COUNTY AND
BONDHOLDER HAVE EXTENDED ORIGINAL MATURITY
DATE—BROWARD COUNTY**

Dear Sir:

From your letter of November 15, 1938, and the papers attached thereto, it appears that Bessemer Properties, Inc. is the owner of \$35,000 of bonds of Broward County, dated January 1, 1922, issued pursuant to the provisions of Article 3, Chapter 3, Title 9, 1st Division, of Revised Statutes of Florida, 1920. It further appears that these \$35,000 of bonds bear maturity dates from 1932 through 1942, but that the County Commissioners of Broward County and Bessemer Properties, Inc. have agreed to extend the maturity dates on the bonds to November 1, 1970. It also appears that the interest coupons maturing on and after January 1, 1938, have been detached from said bonds, and Bessemer Properties, Inc. has agreed to accept interest from and after that date, at the rate set forth in the refunding bonds issued by the county, instead of at the higher rate specified in the original bonds.

You ask to be advised as to whether or not the Board of Administration is legally authorized to carry out the wishes of the county with respect to the payment of interest on the original bonds at the refunding rate.

I am of the opinion that the Board of Administration is authorized to pay, at the refunding rate, any interest coupons detached from the aforesaid bonds, provided said interest coupons are due and unpaid. If, as appears probable, the interest coupons maturing from and after January 1, 1938, have been detached from the bonds and cancelled by Broward County or its agent, without Bessemer Properties, Inc. being

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paid anything for relinquishing said coupons, I am of the opinion that the Board of Administration can pay Bessemer Properties, Inc. for these interest coupons, as they come due, at the refunding rate.

The Board of Administration is a statutory board possessing only such authority as is expressly conferred upon it by statute or as arises by necessary implication from a statutory enactment. Neither the Board of Administration Act nor the statute under which the bonds in question were issued, authorize a subsequent extension of the maturity dates of the bonds. In the absence of statutory authority for such extension, I am of the opinion that the Board of Administration is unauthorized to recognize a voluntary agreement for extension of the maturity dates of the bonds, between the holder and the County. See *Bay County et al, vs. State*, 157 So. 1, and *State vs. Broward County*, 156 So. 491.

September 8, 1938.

PAYMENT OF JUDGMENT—SARASOTA COUNTY

Dear Sir:

Your letter of September 1, 1938, encloses copy of a resolution of the Board of County Commissioners of Sarasota County, dated August 15, 1938, and requests my opinion as to whether or not the Board of Administration is legally authorized to pay the judgment described in the aforementioned resolution.

It has not been made to appear that the Board of Administration has funds in its possession, raised by taxation, for the specific purpose of paying the judgment rendered against Sarasota County. Neither has it been made to appear that the Board of Administration has in its possession applicable funds sufficient in amount to pay, not only the matured interest coupons merged into the aforementioned judgment, but also all other outstanding and unpaid obligations of like character. In the absence of such a showing, I am of the opinion that payment of such judgment would amount to a preferential payment, and hence unauthorized.

March 25, 1937.

**HILLSBOROUGH COUNTY—PAYMENT ON DEMAND OF JUDGMENT
BY BOARD OF ADMINISTRATION**

Dear Sir:

This refers to your letter of March 22, 1937, with which you attached duplicate original of letter addressed to you, under date of March 17, 1937, by * * * through his attorneys * * * reciting the fact that Mr. * * * has obtained judgment in the District Court of the United

STATE BOARD OF ADMINISTRATION

States, in and for the Southern District of Florida, in the sum of \$125,-492.86, against Hillsborough County, a political subdivision of this State, upon certain bonds issued by said county. With said letter there was transmitted to you a paper purporting to be a copy of said judgment. In that letter demand was made upon you and the other members of the Board of Administration, for the payment thereof. You request that I advise you with regard to the matter. Please be advised that I have uniformly ruled that the "first come, first served" rule, as it is known, and as it applies to funds in the hands of the Board of Administration, becomes applicable only when process is issued out of the court, and served upon said Board of Administration, the effect of which is to sequester and impound funds and render them available for the payment of the particular individual, to the exclusion of others equally entitled, out of the same fund. In connection with this matter, I am also advised by the State Treasurer that there were on hand, at the time of the demand, insufficient funds to pay the said judgment in full. Under such circumstances, there was, of course, nothing for the Board of Administration or for you to do, except to refuse the demand. I now understand that alternative writ of mandamus has issued out of the United States District Court, for the Southern District of Florida, Tampa Division, seeking payment of this judgment, or application of funds in the hands of the Board of Administration, toward its payment. Indeed, the letter in question apparently was simply written in a desire to fulfill the rule enumerated by some of the Federal causes, that mandamus becomes available as a remedy only after there has been a demand for payment, and refusal thereof.

The question of the liability of the County of Hillsborough and of the Board of Administration, with respect to this judgment, and of the application of the funds in the hands of the latter Board to the same, will be litigated in the mandamus proceeding to which I have referred.

I understand that the County of Hillsborough is denying that the securities upon which this judgment was obtained, are valid obligations of the County of Hillsborough, and are maintaining that they were not issued pursuant to the provisions of the Constitution of this State.

September 7, 1937.

COMPROMISE OF JUDGMENT—FLAGLER COUNTY

Dear Sir:

Your letter of August 31st states that the Provident Savings Bank & Trust Company has obtained a judgment against Flagler County in the amount of \$6,747.01, plus \$30.00 costs (case 4176-J-Civil); also that the County Commissioners of Flagler County, by resolution dated August 16, 1937, agreed to settle and discharge the above mentioned judgment for the sum of \$6,100.00.

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The letter also states that funds have been remitted to the paying agent for the payment of all past due interest coupons and certificates of indebtedness of Flagler County, including the \$5,500 of certificates of indebtedness merged into the aforementioned judgment, and that there is sufficient additional money in the interest and sinking fund to make the full payment of \$6,100.

Your letter of September 7th recites that the above mentioned matter has been submitted to the Board of Administration, which has agreed to make payment at the compromise rate requested in the foregoing resolution, subject to the supervision of the necessary details by the Attorney General.

I am of the opinion that the Board of Administration is legally authorized to pay the sum of \$6,100 in satisfaction of this judgment. The sum of \$5,500 in the hands of the paying agent, should be recalled, and the balance paid out of the interest and sinking fund of the securities merged into the judgment.

I am enclosing certified copy of resolution of the Board of County Commissioners of Flagler County, bearing date August 16, 1937, certified copy of final judgment in the case of Provident Savings Bank & Trust Company vs. County of Flagler, 4176-J-Civil, U. S. District Court for the Southern District of Florida, certificate of the Clerk describing the certificates of indebtedness sued on, and full satisfaction of the aforementioned judgment executed by the Provident Savings Bank & Trust Company. The last mentioned document should be filed with the Clerk of the United States District Court for the Southern District of Florida, Jacksonville, Florida.

November 22, 1937.

SUMTER COUNTY—PAYMENT OF ATTORNEY'S FEES

Dear Sirs:

Recently the Board of Administration received certified copy of a resolution of the Board of County Commissioners of Sumter County, requesting that the Board of Administration pay a bill of \$750 for legal services rendered to the county by Mr. * * *. The matter was referred to the Attorney General's office, with instructions to investigate the nature of the services rendered, and to give an opinion as to the authority of the Board of Administration to pay the bill. This office wrote Mr. * * * and the Chairman of the Board of County Commissioners, requesting detailed information as to the nature of the services rendered, and the results accomplished. The replies of Mr. * * * and Mr. * * *, Chairman of the Board of County Commissioners, are attached hereto.

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Mr. * * * letter states in substance that he was employed by the county to investigate the Sumter County refunding program recently completed by R. E. Crummer & Company, and to determine whether or not the monies turned over to that company were used in the furtherance of the refunding program. He states further that the county commissioners did not understand the status of the bonded indebtedness, and were unable to get the necessary information to deal with the matter in an intelligent way. He states that he performed the following services:

1. Made a copy of all the records of the Board of Administration relating to Sumter County for the past five years, and compiled this information so that it could be easily understood by the county commissioners;

2. Procured an accounting from R. E. Crummer & Company, of all funds and bonds handled in the refunding program;

3. Made three trips to Bushnell and two trips to Jacksonville;

4. Spent \$34.53 for telephone calls and telegrams; employed an extra stenographer at a cost of \$25.00;

5. Obtained a satisfactory explanation of why a mandamus suit was instituted against the Board of Administration, on bonds and interest coupons which should have been refunded;

6. Procured a rescission of the county commissioners' resolution instructing the Board of Administration not to pay July 1st interest on refunding bonds;

7. Investigated the books of the Clerk of the Circuit Court of Sumter County relating to bond matters, and found them complete;

8. Discovered that there was sufficient money to pay all outstanding defaulted original bonds, in addition to current interest on refunding bonds. Thereupon the Board of County Commissioners passed a resolution requesting the Board of Administration to pay the July 1st interest and all outstanding defaulted bonds and interest coupons;

9. Made extensive investigation of interest and sinking fund monies to the credit of Sumter County, and ascertained the amount of bonds and coupons in default, which were not exchanged for refunding bonds;

10. Carefully examined the refunding contract between Sumter County and the refunding agent, together with all legal papers relating to the refunding of Sumter County bonds.

The letter from Mr. Winton, Chairman of the Board of County Commissioners, states that Mr. * * * was employed as the county's bond attorney; that he made a diligent search into Sumter County bond matters, and advised the County as to the exact status of its bonded indebtedness, that he represented the county in procuring payment, by

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the Board of Administration, of outstanding past due bonds, and that he incurred a great deal of expense in the above matters and made trips to Jacksonville and Bushnell.

It is my opinion that the Board of Administration has no authority to expend funds in its hands, to the credit of Sumter County, for the payment of this bill for legal services. See my opinion dated July 9, 1936, at page 198 of the 1935-1936 Attorney General's Report.

December 30, 1937.

PAYMENT OF ATTORNEY'S FEES—MARION COUNTY

Dear Sir:

Your letter of December 29th advises that the Board of Administration has been presented with a resolution adopted by the Board of County Commissioners of Marion County, on December 7, 1937, requesting the Board of Administration to pay, out of any funds under its supervision to the credit of Marion County, the bill of Honorable Wallace E. * * *, County Attorney, in the amount of \$272.25, for legal services and expenses incurred in the matter of intervention of Marion County in the suit of H. B. Kerce vs. J. M. Lee, Comptroller. Your letter also states that Marion County levied a one mill tax for the year 1934, for debt service and that the Clerk of the Circuit Court has advised you by letter that this levy was made for the purpose of defraying any expense incurred by the county in its refunding operations. You ask to be advised as to whether or not the Board of Administration is legally authorized to pay the bill out of the interest and sinking funds of Marion County, or out of the above mentioned debt service fund.

I am of the opinion that the Board of Administration is not authorized to pay this bill for legal services. See my opinion dated November 22, 1937, re: Board of Administration—Sumter County—Payment of Attorney's Fees.

GASOLINE TAX

March 22, 1937.

GILCHRIST COUNTY—COUNTY GAS TAX SURPLUSES—REMITTANCE BY BOARD OF ADMINISTRATION

Dear Sir:

This refers to your letter of March 17, 1937, with which you enclosed copy of a letter of the same date addressed to you by the Attorney for the Board of County Commissioners of Gilchrist County.

The situation presented by the two letters is essentially as follows:

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State road No. 14 passes through the town of Trenton County, Florida. The portion of the road beyond the corporate limits is twenty feet wide, while the portion within such limits is twenty-eight feet wide. Of the portion within the corporate limits, the middle twenty feet of the total width was constructed pursuant to contract of the State Road Department with its contractor, the county, at such time, paying the portion of the cost falling on it by making available to the Road Department some \$60,000.00 of gasoline tax monies credited to the county, no county bonds being issued. Apparently this \$60,000.00 paid in full the county's portion of the burden of the cost of construction. Prior to, or about, the time of the commencement of construction, it was thought by the Town of Trenton and its citizens to be desirable to widen this street and to curb and gutter it on either side, due to the fact that the town's program of street improvements included the placing of storm sewers under certain of its streets, including this one; and due to the fact that it was thought that the program, so far as this street was concerned, could be more satisfactorily accomplished by widening the street and curbing and guttering it at the time of the construction, by the State Road Department, of the twenty foot middle width. It was thought that the additional paving, curbing, and guttering would be financed by the town, though the issuance and sale of bonds payable through the exercise of the town's general taxing power. The town, accordingly, contracted with the same contractor for the additional eight foot width of paving (four feet on either side) of the twenty constructed pursuant to the State Road Department's contract, and for its curbing and guttering. However, the Act of the Legislature authorizing the issue of bonds, contained a provision forbidding their original sale for less than par. At the time, the Florida bond market was in such state that compliance with this provision was impossible. So it was that the bonds were never issued.

The contractor completed his work for the town; and its council paid him on account some \$1500.00 out of general funds of the town. In 1935 he became dissatisfied, brought suit, and recovered judgment against the town for the balance due him on his contract, with interest. In order to raise funds with which to satisfy the judgment, the council assessed the abutting property owners on such basis as that they should bear two-thirds of the cost of the improvement. The remaining one-third of the cost was provided by the council to be paid from taxes levied and assessed on all of the town's taxable property.

Some of the town's property owners, being dissatisfied with this arrangement, and in particular some of the abutting property owners against whom suits are threatened for the collection of assessments made, have suggested to the Board of County Commissioners of Gilchrist County that the balance of this judgment against the town might well be paid by the county, through application to it of surpluses of gasoline tax

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monies available to the county, and now to its credit, in the hands of the Board of Administration. For them it is urged that the portion of the street within the corporate limits is a State highway, maintained in its entirety by the State Road Department. By others it is pointed out that the paving constructed through the town's contract is a city street.

The Board of County Commissioners, through its attorney's letter to you, emphasizes that it has not committed itself one way or the other; but the said Board desires you to inquire of me whether it is my view that surplus gasoline tax monies credited to the county, if returned to it pursuant to its request and under the applicable provisions of law, could be by it legally applied in reduction of the balance due on this judgment.

Your letter, after stating that the county has to its credit, in the hands of the Board of Administration, several thousands of dollars constituting a surplus over and above sinking fund requirements, contains the specific request that I furnish you my formal written opinion on the following question:

Whether or not the Board of Administration would be authorized to remit such surplus gasoline tax monies to the County of Gilchrist, if the resolution requesting such remittance, specifically states that the money is to be used, when received, for application to the payment of the judgment against the town.

The official character of this opinion is necessarily, of course, limited by the scope of your inquiry. In answer to your question, for the reasons appearing below, I am of the opinion that the Board of Administration would be authorized to remit surplus gasoline tax monies to the County of Gilchrist, even though the resolution requesting such remittance should state that the money is to be used for application to the payment of this judgment. This is not to be construed, however, as an expression of opinion on my part that this money, when received by the county, could properly be applied to that judgment. My answer is based largely upon the provisions of Chapter 14486, Laws of Florida, Acts of 1929, as amended by Chapter 15891, Laws of Florida, Acts of 1933. The latter Act, amending Section 14 of the former Act, provides in part as follows:

"* * * Any surplus in any county accounts, except sinking fund accounts, after such application as is provided herein, shall be remitted to the county for the use of which such account was created, and shall be used by such county only in the construction and/or maintenance of roads therein."

From this you will note that the Board of Administration is not charged with the duty of seeing that surplus gasoline tax monies, remitted by it to counties pursuant to their request, are used for the pur-

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pose in said Act provided, that is to say, in the construction and/or maintenance of roads in said counties. The limitation as to the use of such money is one which applies, in my opinion, to the county and its officials, and any duty, or dereliction of duty, with respect to such use, is the primary problem and concern of such county and its officials. With that problem, the Board of Administration, being a mere fiscal agent, having only the powers and the duties expressly imposed upon it by the statutes in question, has nothing to do. However, if any such resolution should contain any statement of the character referred to above, with reference to the intended use of the money by the county, then, in my opinion, it would be both proper and desirable for the Board of Administration, at the time of remitting the money, to direct attention to the fact that said Chapter 15891 provides that this money be used by the county only in the construction and/or maintenance of roads therein.

This is as far as I am required to go, by your question, in officially advising you. And it is as far as I would go in making any suggestions, were it not for the fact that the Board of County Commissioners involved, its attorney, and you, seem desirous of suggestions as to whether the intended use of the money, in application to this judgment, would be a legal use. As to this, I think it proper to suggest that it appears that the county originally contributed and paid for its full share of the construction of the portion of the State highway lying within the corporate limits of the Town of Trenton; and that with such original contribution and payment, its liability for such cost of construction was discharged; that the additional paving was undertaken and accomplished as a town project; that the liability therefor has been adjudicated by a court of competent jurisdiction, as a liability of the town; and that, under such circumstances, if it appearing that such liability is for maintenance of the paving, but rather for the cost of its construction, it would seem to be clear that it would not constitute a proper use of such surplus, which is county money, to apply it to the liability in question, which is distinctly a town liability. I may suggest that I know of no provision of the law which would authorize such use of any surplus, should it be returned.

June 29, 1937.

GADSDEN COUNTY—DISTRIBUTION OF GASOLINE TAX—
CHAPTERS 15659, ACTS OF 1931, AND 15890,
ACTS OF 1933

Dear Sir:

I have your letter of June 28, 1937, in which you refer to certain provisions of the above statute. You state that within a few months, Gadsden County will have received the amount certified as having been

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advanced by that county, as provided in Sub-section (c) of Section 8 of said Chapter 15659, so that the distribution of gasoline tax money to this county, provided in said Section 8 (c) and Section 9 of the chapter last aforesaid, would be effective unless, with particular reference to Gadsden County, the provisions made in those sections are modified by the provisions of said Chapter 15890. You request to be advised whether, when the amount advanced or contributed by the county in question shall have been fully repaid, the Board of Administration would be authorized to disburse or distribute the proceeds of the second gas tax allocated to Gadsden County, under and pursuant to the provisions of Chapter 15890, rather than pursuant to the provisions of Chapter 15659. Section 8 (c) of Chapter 15659 provides in effect that when the amount above referred to, has been returned to a county, the county shall continue to participate in the distribution of the second gasoline tax, as provided in sub-section (b) of said Section 8, so that thereafter a sum equal to the sum provided to be returned to such county, shall be monthly paid into the State Road License fund, for the use of the State Road Department, in constructing within said county certain specific State roads. By referring to sub-section (b) of said Section 8, it will be seen that provision is made that the Comptroller "shall, each month, draw his order on the Treasurer of the State of Florida, for the full net amount of monies then with the State treasury, in said 'State Roads Distribution fund' * * *". Section 9 of said Chapter 15659 provides that all monies provided to be credited to the various counties of the State, shall be administered by the Board of Administration, as provided by law. It further provides that monies to be used for Road and Bridge construction, in the completion of designated State roads within any county, shall be placed in the State treasury, in the State Road License fund, to the credit of the State Road Department. Thus it will be seen that when a county has once been paid back the amount of its original contribution, the statute still contemplates that before the monies, subsequently allocated to the counties, reach the State Road License fund, they pass through the hands of the State Treasurer, as County Treasurer Ex Officio, and of the Board of Administration. While you have never previously requested any opinion of this office on the matter, I understand that this has been your administrative construction of the procedure to be followed. And I believe that it is the correct procedure.

I have noticed these provisions and this administrative procedure because it is important in determining the effect of said Chapter 15890. As to the latter chapter, I express no opinion as to its constitutional validity, being of the opinion that administrative officials would be authorized to follow the provisions of a presumptively valid law, unless and until the same is declared invalid by some court of competent jurisdiction. That Act, in Section 6, provides that all laws and parts of laws, general or special, in conflict with the provisions thereof, are repealed. It provides for a definite and specific method of distribution

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of funds coming into the possession of, or under the control of, the Board of Administration, to the credit of Gadsden County. When Gadsden County will have received, as you state, gasoline tax monies in an amount equal to the amount originally advanced, the subsequent allocation to that county would, in the normal administrative processes, come in to the hands or under the control of the Board of Administration, as pointed out above. For this reason, the provisions of Chapter 15659, relative to the distribution of such latter funds, and the disbursement thereof, are to that extent in conflict with the provisions of said Chapter 15890, and it is my opinion that the provisions of the latter chapter would govern, as to the distribution and use of this money, rather than the provisions of the former, subject, however, to the proviso that should Chapter 15890 be held invalid by a court of competent jurisdiction, the provisions of Chapter 15659 would then govern. Until then, I am of the view that when the contingency pointed out in your letter has happened, you would be authorized to disburse the proceeds of the second gas tax pursuant to the provisions of Chapter 15890.

June 29, 1937.

**BAKER COUNTY—SENATE BILL 448, ACTS OF 1937, APPROVED
MAY 12, 1937, CHAPTER 17969**

Dear Sir:

You have transmitted to me copy of the above referred to Senate Bill, which purports to authorize the State Board of Administration to pay monthly to the County Road and Bridge funds of counties having a population of not less than 7150 and not more than 7200, according to the State census of 1935, all monies appropriated to the use of the State Road Department, as in said Act provided. It appears that Baker County comes within the classification mentioned in the Act. I express no opinion as to the constitutionality of this measure. Presumptively it is valid, and until it is declared invalid by a court of competent jurisdiction, you would be authorized, in my opinion, to comply with its terms and provisions.

July 7, 1937.

**WAKULLA COUNTY—DISTRIBUTION OF GASOLINE TAX—HOUSE
BILL NO. 1915, ACTS OF 1937, CHAPTER 17966 AND
CHAPTER 15659, ACTS OF 1931**

Dear Sir:

I have your letter of July 2, 1937, in which you refer to the above statutes. You state that Wakulla County has received all of the Gasoline tax monies to which it is entitled, according to certification, under the provisions of Chapter 15659, Acts of 1931, pursuant to which chapter such

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funds are now being paid into the State Road License fund. You enclose a copy of House Bill No. 1915, 1937 Legislature, relating to the distribution and expenditure of moneys derived from Gasoline taxes credited to Wakulla County, and conferring certain duties upon the State Board of Administration in reference thereto, and request to be advised whether the Board of Administration has legal authority to comply with House Bill 1915, Legislature of 1937, or whether the provisions of Chapter 15659, Acts of 1931, would govern such disbursement.

Chapter 15659, Acts of 1931 Legislature, provides a different method of distribution than that provided in House Bill 1915, and Section 4 of the latter Act provides that all laws and parts of laws in conflict herewith are hereby repealed.

As to House Bill 1915, Acts of 1937 Legislature, I express no opinion as to its constitutional validity, being of the opinion that administrative officials would be authorized to follow the provisions of a presumptively valid law, unless and until the same is declared invalid by some court of competent jurisdiction. It is my opinion that the provisions of House Bill 1915, Acts of the 1937 Legislature, would govern, rather than the provisions of Chapter 15659, Acts of the 1931 Legislature, subject, however, to the proviso that should House Bill 1915, Acts of 1937 Legislature, be held invalid by a court of competent jurisdiction, the provisions of Chapter 15659, Acts of 1931, would then govern. Until then, I am of the view that the Board of Administration would be authorized to act pursuant to the provisions of House Bill 1915, Acts of the 1937 Legislature

July 17, 1937.

BILL NO. 1965—CHAPTER 17972, LAWS OF FLORIDA, ACTS OF
1937—SANTA ROSA COUNTY

Dear Sir:

I have your letter of July 13th, enclosing copy of above mentioned Act, and requesting my opinion as to whether or not the Board of Administration has legal authority to comply with the terms and provisions of that Act.

This Act is applicable only to counties having a population of not less than 15,500, and not more than 16,300, according to the last preceding State census, and Section 1 thereof directs the State Board of Administration to pay to the Board of County Commissioners of such counties, all monies now, or hereafter, coming into the State Road Distribution fund derived from the proceeds of the second gas tax, over and above the amount required for principal and interest and sinking fund of the Road and Bridge bonds of such counties. The remaining sections of this Act place no duties upon the State Board of Administration.

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I express no opinion as to the constitutionality of this Act, as I am of the opinion that administration officials would be authorized to follow the provisions of a presumptively valid law, unless and until the same is declared invalid by some court of competent jurisdiction. Unless and until this Act is held invalid, I am of the opinion that the Board of Administration would be legally authorized to comply with the provisions thereof.

September 23, 1937.

RETURN OF SURPLUS GASOLINE TAXES—SUWANNEE COUNTY

Dear Sir:

Your letter of September 20th encloses certified copy of resolution of Board of County Commissioners of Suwannee County, dated September 15, 1937.

The resolution recites that Suwannee County has an agreement with the State Road Department, whereby the county is to advance a sum of money to the Road Department as partial payment for anticipated road construction in Suwannee County. The resolution requests the Board of Administration to turn over and revert to the use of the State Road Department, Suwannee County's balance of gasoline surplus revenue as of September 1, 1937. Your letter states that this surplus to the credit of Suwannee County amounts to \$26,000.

Chapter 17723, Laws of Florida, Acts of 1937, a population act, pertaining to disposition of surplus gasoline tax funds to the credit of Suwannee County, has been declared unconstitutional by the Circuit Court of Leon County, and no appeal has been taken from such decision.

Section 14 of Chapter 14486, Laws of Florida, Acts of 1929, provides in part as follows:

"Provided that any surplus in any county accounts, except sinking fund accounts, after such application as is provided herein, shall be remitted to the county for the use of which such account was created, and shall be used by such county only in the construction and/or maintenance of roads therein."

You ask to be advised whether or not the Board of Administration has legal authority to remit the aforementioned \$26,000 of surplus gasoline tax funds to the State Road Department, as requested in the aforementioned resolution.

It is my opinion that the Board of Administration is legally authorized to cause a warrant to be issued, payable to Suwannee County, for the amount of surplus gasoline tax funds of Suwannee County, in the hands of the Board of Administration on September 1, 1937, and

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to deliver said warrant to the State Road Department. In so doing, the Board of Administration will be acting in compliance with the above quoted provision of Chapter 14486, and such action will be in substantial compliance with the above mentioned resolution.

This warrant, when issued, should not be honored by you unless properly endorsed by Suwannee County.

October 20, 1937.

CHAPTER 18581, LAWS OF FLORIDA, ACTS OF 1937

Dear Sir:

Your letter of September 27th encloses copy of the above mentioned Act, together with resolution of the Board of County Commissioners of Hillsborough County, dated September 3, 1937, requesting the Board of Administration to take certain action pursuant to this Act.

The Act provides in substance that where obligations of Hillsborough County have been paid, and funds remain in interest and sinking funds maintained for the benefit of such obligations, that all cash, bonds and other securities in such interest and sinking funds shall, upon resolution of the Board of County Commissioners of Hillsborough County, be transferred to such other interest and sinking fund of the county, as is designated in such resolution. The above mentioned resolution of Hillsborough County requested the Board of Administration to transfer cash and bonds from certain interest and sinking funds to ascertain other interest and sinking funds of Hillsborough County. Your letter states that the accounts from which these transfers are to be made do not have any outstanding bonds, for the reason that they have previously been paid, retired and cancelled, and you request my opinion as to whether or not the Board of Administration is authorized to comply with the above mentioned Act and resolution. I am of the opinion that the Board of Administration is legally authorized to comply with the provisions of the above mentioned act and resolution. I express no opinion as to the constitutionality of this Act, as I am of the opinion that administrative officers are authorized to comply with the provisions of an Act of the Legislature unless and until same has been declared unconstitutional by a court of competent jurisdiction.

October 22, 1937.

CHAPTER 17041, ACTS OF 1935—ST. LUCIE COUNTY

Dear Sir:

Your letter of September 20th advised that in the past the Board of Administration has complied with the provisions of Chapter 17041,

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Acts of 1935, which directs that all gasoline tax money shall be distributed to St. Lucie County. It also advised that on August 17, 1937, the County Commissioners of St. Lucie County accepted the provisions of Chapter 15891, Acts of 1933, commonly known as the Kanner Bill, with respect to gasoline tax money then, or thereafter, credited to the account of St. Lucie County, or any special road and bridge district therein.

You request my opinion as to whether or not gasoline tax moneys now on hand, and those received since August 17, 1937, should be credited to the Kanner Bill account of St. Lucie County, or if the gasoline tax money should be held in a suspense account, pending determination of the Status of Chapter 17041. I beg to advise that you are authorized to comply with the said resolution bearing date August 17, 1937, and transfer the gasoline tax funds on hand, and those which may be hereafter credited to the account of St. Lucie County, to the Kanner Bill accounts of St. Lucie County and its special road and bridge districts.

Chapter 17041, Acts of 1933, has been declared unconstitutional and void by the Circuit Court of Leon County, and J. M. Lee, as Comptroller of the State of Florida, and as Secretary of the Board of Administration, has been perpetually enjoined from making any distribution of gasoline tax funds pursuant to that law. This order was entered on October 14, 1937, in the case of H. B. Kerce, plaintiff vs. J. M. Lee, as Comptroller of the State of Florida, defendant, in which case the County of St. Lucie was allowed to intervene and, upon intervention, consented to the entry of the aforementioned order.

November 22, 1937.

CHAPTER 14486, ACTS OF 1929—PAYMENT OF SURPLUS GASOLINE
TAX FUNDS DIRECT TO STATE ROAD DEPARTMENT

Dear Sir:

Your letter of November 20, 1937, states in substance that Suwannee, LaFayette, Collier and Walton Counties desire the State Road Department to construct roads in such counties, using surplus gasoline taxes accruing pursuant to Section 14 of Chapter 14486, Laws of Florida, Acts of 1929, which the counties propose to contribute to the State Road Department, pursuant to the provisions of Section 1662 Compiled General Laws of Florida, 1927.

Your letter also states that the State Road Department is willing to let contracts for this purpose, provided the surpluses are pledged for such purpose, and are paid over promptly by the State Treasurer, as County Treasurer ex officio, to the State Road Department, and you

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ask to be advised if the State Treasurer is authorized to recognize resolutions of the respective counties, requesting him to pay over the surpluses to the State Road Department.

Section 12 of Chapter 14486, Laws of Florida, Acts of 1929, creates the Board of Administration, and requires each member thereof to give a surety bond conditioned upon the faithful performance of the duties of such member and the proper accounting for and paying over to the persons or *subdivisions* entitled thereto, of all funds coming into the hands of said Board.

Section 14 of the same Act provides that any surplus in any county accounts "shall be *remitted* to the county, for the use of which such account was created, and shall be used by such county only in the construction and/or maintenance of roads therein."

The question is whether or not the Board of Administration has complied with its duty, if, pursuant to instructions by a county, it draws a warrant for the determined surplus, payable to the State Road Department, instead of to the county officials, there being in existence a contract between the county and the State Road Department, for road construction in the county to be paid for in part by the county. In my opinion, the Board would not be complying with its statutory duty were it to follow such a procedure.

The following definition of the word "remit" is found in Ballentine's Law Dictionary:

"The Century Dictionary defines it as to transmit or send, as money, bills, or other things, in payment for goods received. The New International Dictionary defines the word as meaning to transmit or send, especially to a distance, as money in payment of a demand, account, draft, etc. The word is frequently used as a synonym, as the verb 'forward.' See *Nicoletti vs. Bank of Los Banos*, 190 Cal. 637, 27 A. L. R. 1479, 1483, 214 Pac. Rep. 51. To remit means to send back. In the absence of any specific direction as to the mode of sending a check, it would be remitted as soon as it was placed in the mail. See *Colvin vs. U. S. Mutual Accident Association*, 66 Hun (N. Y.) 543, 545, 21 N. Y. Supp. 734."

Words and Phrases defines the term in somewhat similar language.

Section 15 of Chapter 14486 requires that all expenditures of the Board of Administration shall be made upon warrant. It seems clear that the Board of Administration Act contemplated that the Board would cause a warrant to be drawn for the amount of the surplus on hand; that the payee named in the warrant would be the county in whose account the surplus exists; and that the warrant would be mailed or transmitted by other means to the county. There is nothing in the

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Act to indicate that the Legislature intended or contemplated that the surplus would be paid to the State Road Department, or anyone else other than the county. The Legislature has provided that the proceeds of the second gas tax should be paid direct to the State Road Department upon the happening of a certain contingency. That is to say, when the amount originally contributed by the county, in the construction of State roads, has been returned to the county, a similar amount derived from proceeds of the second gas tax is appropriated to the use of the State Road Department for road construction within the county. In Suwannee, LaFayette, Collier and Walton Counties the full amount of their original contribution has not been returned.

In *Thomas vs. Carlton*, 143 So. 781, the Supreme Court of Florida, in discussing a statute, said:

"The statute specifically directs the manner in which the funds should be paid out, and public officials charged with the custody and control of public funds may only pay out the same in the manner provided by statute, when the statute directs the manner and method of such payment."

The previously mentioned provision of the Board of Administration Act places a duty upon the Board of Administration to remit the surplus to the counties. The counties have no authority to alter or amend that duty, and resolutions directing the Board of Administration to make payment of the surplus to the State Road Department, in lieu of payment to the counties, do not authorize the Board of Administration to follow the provisions of those resolutions, rather than the provisions of the statute.

January 7, 1938.

MANATEE COUNTY—CHAPTER 18671, ACTS OF 1937

Dear Sir:

From your letter of January 5, 1938, it appears that all bonds and interest coupons of Sneads Island Special Road and Bridge District of Manatee County have been paid, and that there is \$496.13 in the interest and sinking fund.

Chapter 18671, Acts of 1937, authorizes the Board of Administration to transfer \$400 in the interest and sinking fund of Sneads Island Road and Bridge District, after redemption of the bonds theretofore issued by that district, to the Board of County Commissioners of Manatee County, for deposit in the Maintenance fund of said road and bridge district. You ask to be advised as to whether or not the Board of Administration is authorized to comply with this Act, and if it is authorized to transfer, in addition to the \$400, the balance of \$96.13, to-

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gether with any future accruals, to such interest and sinking fund. I am of the opinion that the Board of Administration is legally authorized to comply with the provisions of the aforementioned chapter and make the transfer of \$400 from such interest and sinking fund, to the Board of County Commissioners, but I am of the opinion that the Act does not authorize the transfer of the sum in excess of that amount, nor the transfer of future accruals to the interest and sinking fund. I express no opinion as to the constitutionality of the above Act, as I am of the opinion that administrative officers are legally authorized to comply with the provisions of a legislative enactment, unless and until same has been declared unconstitutional by a court of competent jurisdiction.

January 18, 1938.

CHAPTER 18973, ACTS OF 1937—WALTON COUNTY

Dear Sir:

Your letter of January 10, 1938, states that all bonded indebtedness of Special Road and Bridge District No. 1 of Walton County, has been paid, and that there is a balance of \$624.74 in the hands of the Board of Administration, to the credit of said District. You ask to be advised as to whether or not you are authorized to comply with the provisions of the above Act.

Said Chapter 18973 directs the State Treasurer, as County Treasurer Ex Officio, to pay over the sum of \$588.89 to the credit of said District, to the Board of County Commissioners of Walton County. I am of the opinion that the Board of Administration is authorized to comply with the provisions of the aforesaid chapter, but that that Act does not authorize the payment of any sum in excess of the amount stated therein.

I express no opinion as to the constitutionality of the above mentioned statute, as I am of the opinion that an administrative officer is legally authorized to comply with the provisions of a legislative enactment unless and until same has been declared unconstitutional by a court of competent jurisdiction.

January 21, 1938.

CHAPTER 11259, SPECIAL ACTS OF 1925—RETURN OF SURPLUS
GASOLINE TAXES TO BOARD OF BOND TRUSTEES—
UNION COUNTY

Dear Sir:

Your letter of January 12, 1938, states that you have received a certified copy of a resolution of the Board of Bond Trustees of Union County, dated January 6, 1938, requesting the Board of Administration

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to remit any surplus gasoline tax funds to it, to be used in the construction and/or maintenance of roads in Union County. You ask to be advised as to whether or not the Board of Administration has legal authority to comply with this resolution, assuming that such a surplus exists.

Chapter 14486, Laws of Florida, Acts of 1929 (Board of Administration Act), reads in part as follows:

"Provided that any surplus in any county accounts, except sinking fund accounts, after such application as is provided herein, shall be remitted to the county for the use of which such account was created, and shall be used by such county only in the construction and/or maintenance of roads therein."

Chapter 11259, Laws of Florida, Special Acts of 1925, creates a Board of Bond Trustees of Union County, and vests them with certain powers pertaining to roads within that county. The following are excerpts from that Act:

"It is further provided that the Bond Trustees created by this Act shall use their best efforts to keep all public roads of said Union County in good condition, * * *

"* * * the said Board shall be trustees for all bonds issued, and the moneys arising therefrom, under this Act, and all moneys collected by the said Union County, for road and bridge purposes."

"The Board of Bond Trustees shall have the entire control, supervision, care, construction and maintenance of the roads and bridges provided for, to be constructed in Section One of this Act, and all other roads and bridges in said county, and shall have the custody and control of the moneys arising from the sale of said bonds and all other moneys collected for road and bridge purposes in Union County, and all monies collected by Union County for road and bridge purposes, shall be delivered by the collector of the same, to the said Board of Bond Trustees."

"That the said Board of Bond Trustees shall have an exercise all right and receive any and all benefits of the general laws of the State of Florida now in force, or that may hereafter come in force, that are not in direct conflict with this Act;"

"In the event that the bond issue provided for in this Act shall be approved by a majority of the qualified freeholder electors voting in the election to be held for that purpose, the Board of Bond Trustees herein provided for shall, insofar as the control, care, management, maintenance and constructions of the public roads of Union County are concerned, succeed the Board of County Commissioners of Union County, and on or before

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the first Monday in December, 1925, said Board of County Commissioners of Union County, or other official board having possession thereof, shall deliver to the Board of Bond Trustees herein provided for, by the provisions of this Act, all monies, machinery, tools, implements, and all personal property of every kind and nature, used, or to be used, for the construction, maintenance, management and control of the public roads in Union County, and shall make an inventory thereof and take appropriate receipts for all such money and property."

The Secretary of State's office advises that this Act became law pursuant to referendum election provided for herein, and that said law is still in full force and effect.

Compiled General Laws of Florida, 1927, Sec. 2153, gives the Board of County Commissioners of the several counties power to build and keep in repair roads and bridges. The mechanics for performance of these duties are provided for in detail by Sections 2436 to 2453 thereof. The above mentioned Chapter 11259 divests the County Commissioners of Union County of these duties, and vests all authority for construction and repair of roads in Union County, in the Board of Bond Trustees.

The Board of Administration Act does not designate what officer or board of the county shall be authorized to receive the surplus funds which that Act required to be returned to the county, but the funds, when received, are required by law to be used for the "construction and/or maintenance of roads therein." In nearly all the counties, the boards of county commissioners have the power and duty to carry out this work, and it is entirely proper that the surplus funds be returned to the county commissioners having such powers. However, in Union County, the Board of Bond Trustees succeeds the Board of County Commissioners, as to the care, management, maintenance, and construction of public roads; therefore, I am of the opinion that if a surplus exists, it may be legally returned to the Board of Bond Trustees of Union County.

February 4, 1938.

**CHAPTER 17960, ACTS OF 1937—DISBURSEMENT OF GASOLINE
TAX FUNDS—OKEECHOBEE COUNTY**

Dear Sir:

With your letter of November 12, 1937, was transmitted a copy of Chapter 17960, Acts of 1937, and you ask to be advised as to whether or not the Board of Administration is authorized to remit 253/1143 of the gasoline tax money distributed to Okeechobee County, to the Clerk of the Circuit Court of Okeechobee County, in accordance with the terms of the above mentioned statute. We have delayed replying to your

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letter, for the reason that the validity of this Act has been brought into question in the Federal District Court for the Southern District of Florida, in the case of United States, ex rel. Bessemer Properties, Inc., realtor, vs. Fred P. Cone, et al, respondents, case No. 54, Ft. Pierce Civil. On January 27, 1938, that Court entered an order sustaining the respondent's motion to quash the alternative writ, upon the ground that said Act is unconstitutional. Accordingly you are advised that the Board of Administration is unauthorized to comply with the provisions of that Act.

We are enclosing copy of the above mentioned court order, together with the resolution transmitted in your letter.

December 5, 1938.

**GASOLINE TAX—RETURN OF SURPLUS FUNDS—
SUWANNEE COUNTY**

Dear Sir:

From your letter of December 5, 1938, and the statement attached thereto, it appears that, as of December 1, 1938, the funds of Suwannee County, in the Board of Administration's hands, exceed by \$57.93 the interest and sinking funds requirements of that county as of that date.

It is also made to appear that, on the basis of estimated gasoline tax collections from now until April 1, 1939, the Board of Administration will have on that date \$8,726.03 more than the interest and sinking fund requirements of the county on that date.

Your letter states that the county has requested the Board of Administration to remit \$6,500 of gasoline tax money to it at this time, and you request my opinion as to the Board's legal authority to comply with such request.

While your letter does not so state, I assume that the county's request is based upon Section 14 of Chapter 14486, Laws of Florida, Acts of 1929, as amended, which reads in part as follows:

"Provided that any surplus in any County accounts, except sinking fund accounts, after such application as is provided herein, shall be remitted to the County for the use of which such account was created and shall be used by such County only in the construction and/or maintenance of roads therein."

I am of the opinion that the Board is not authorized to comply with the request. On the basis of the figures submitted, such a surplus does not now exist. The fact that the Board has estimated that by April 1, 1939, funds to the credit of the county will exceed its interest and sinking fund requirements by more than \$8,000, does not, in my opinion, authorize the Board to make the requested payment at the present time.

STATE BOARD OF ADMINISTRATION

FUNDS AND ASSETS

June 29, 1937.

DUVAL COUNTY—TRANSFER OF FUNDS—HOUSE BILL 2032,
ACTS OF 1937*Dear Sir:*

Your letter of June 17, 1937, states that the House Bill above referred to was approved by the Governor June 7, 1937, and was filed in the office of the Secretary of State on June 12, 1937. That House Bill is entitled "An Act authorizing and directing the State Board of Administration to transfer from the sinking fund of the Road Bond Issue of July 1, 1923, of Duval County, Certain Bonds of Duval County, to the sinking fund of the Road Bond Issue of October 1, 1925, of Duval County." You state that the Board of Administration holds for investment in the account of Duval County, Road bonds of the issue of 1923 aforesaid, \$10,000 of Duval County Road bonds dated July 1, 1923, due July 1, 1940, and that House Bill 2032 aforesaid purports to authorize and direct the Board of Administration to purchase these particular bonds for the sinking fund of Road bonds of Duval County dated October 1, 1925, at the price of par plus accrued interest. You further state that at its meeting recently held, the Board of Administration directed you to request my opinion as to whether the Board would be authorized to comply with the terms and provisions of said House Bill. Please be advised that I am of opinion that if the Board of Administration, as a matter of policy, approves this transfer, it will be fully authorized to comply with the terms and provisions of said House Bill. I express no opinion as to the constitutional validity of the Act in question, for the reason that in my opinion the Board would be authorized to follow the provisions of a presumptively valid law, unless and until it were declared invalid by some court of competent jurisdiction.

July 21, 1937.

SUMTER COUNTY—TRANSFER OF FUNDS

Dear Sir:

I have your letter of July 19th, in which you state that on June 27, 1936, the Board of County Commissioners of Sumter County adopted a resolution stating that they did not intend to rescind their prior action accepting the terms of the Kanner Bill, and further stating that gasoline tax funds should continue to be credited to the Kanner Bill account; that subsequently, the Board of County Commissioners appropriated gasoline tax receipts for the fiscal year ending September 30, 1937, to debt-service.

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Your letter also states that you requested the Clerk of the Circuit Court to furnish certified copy of a resolution rejecting the terms of the Kanner Bill, and directing that gasoline tax money be applied to debt-service in accordance with the appropriation made in the budget for the fiscal year ending September 30, 1937, but that you received no further information concerning this matter.

You request my written opinion as to whether you should continue to carry gasoline tax funds received during such fiscal year in the Kanner Bill account, or whether same should be carried in the interest and sinking fund account.

From the above it appears that the county has never specifically rejected the provisions of the Kanner Bill, although its conflicting actions with respect to gasoline tax funds have been called to the attention of the Clerk. The appropriation of gas tax revenues to debt-service is not conclusive on the question of the use to which these revenues should be put by the Board of Administration. See *State ex rel Wall et al vs. Sholtz et al*, 160 So. 877, in which the Board of Administration was required to permit Martin County to conduct its fiscal affairs under the Kanner Bill, even though gasoline tax revenues had been appropriated by the county budget to debt-service.

I am of the opinion that you should continue to carry such funds in the Kanner Bill account, unless you receive certified copy of a resolution of the County Commissioners rescinding its resolution previously mentioned, or unless you are required by a court of competent jurisdiction to transfer these funds from the Kanner Bill account to the interest and sinking fund.

In the event that mandamus proceedings are instituted on securities payable from the fund to which the county budget appropriated the anticipated gasoline tax revenues, you should impound sufficient of the funds in the Kanner Bill account to pay such securities in the event the Court should hold the Kanner Bill funds applicable thereto.

August 19, 1937.

TRANSFER OF FUNDS—MARION COUNTY

Dear Sir:

Your letter of August 14th advises that the Board of Administration is holding a sum of money to the credit of Special Road and Bridge District No. 2 of Marion County, and that all the bonds of this district were paid on April 1, 1933. You enclose certified copy of a resolution of the Board of County Commissioners of Marion County, dated August 3, 1937, which purports to transfer all funds of Road and Bridge District No. 2 held by the Board of Administration, to the general interest

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and sinking fund of Marion County, and also directs that future collections of delinquent taxes of the district be remitted to the State Board of Administration, for credit on the general bond interest and sinking fund account of the county.

You request my opinion as to whether or not the Board of Administration is authorized to transfer the remaining balance in special road and bridge district No. 2, to the general county road and bridge bond interest and sinking fund account, pursuant to the above mentioned resolution. Your letter does not state, but you advised me orally, that this balance is the product of ad valorem taxes levied in the district, for the purpose of paying the district's obligations.

I am of the opinion that the above mentioned resolution does not authorize the Board of Administration to transfer funds raised by ad valorem taxes in a particular road and bridge district, to the interest and sinking fund account of the county maintained for the payment of countywide obligations. Your question must, therefore, be answered in the negative.

March 14, 1938.

BONDS—SUMTER COUNTY—PURCHASE OF AND TRANSFER OF FUNDS FROM KANNER BILL ACCOUNT

Dear Sir:

Your letter of February 16, 1938 advises that the Board of County Commissioners of Sumter County, by resolution dated January 10, 1938, authorized and requested the Board of Administration to purchase 12,000 par value Sumter County Refunding Bonds at a price of 80 and accrued interest, and to transfer sufficient funds from the Kanner Bill Account to make the purchase after existing balances in the Interest and Sinking Fund of the refunding bonds. You state that on January 21, 1938 the Board of Administration agreed to make the transfer and purchase, and you ask my opinion as to your authority to issue a warrant for this purchase.

Section 17 of Chapter 14486, Laws of Florida, Acts of 1929 (Board of Administration Act) instructs the State Treasurer, as County Treasurer ex officio, to deposit the funds administered by the Board in banks at the best possible interest rate. This section also authorizes the Board of Administration to invest the funds administered by it in certain kinds of securities, including County Road Bonds. There is no legal objection to the investment of interest and sinking funds of a particular bond issue in bonds of that issue; (see opinion dated December 13, 1934, page 163, 1933-34 Attorney General's Report); but the price paid for the securities purchased as investments must not be greater than their market value; (see opinion dated November 28, 1934, page 182, 1933-34

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Attorney General's Report); and only "surplus" funds may be used for investment purposes; (see opinion dated March 10, 1936, page 139, 1935-36 Attorney General's Report).

The primary function of the Board of Administration is to remit applicable funds to the paying agent named in the bonds, with instruction to pay such bonds and the interest thereon as they mature. Funds needed for this purpose should not be used to make investments.

In order to determine whether or not a surplus exists in an Interest and Sinking Fund, the Board of Administration should:

(a) Add the existing balance to the anticipated revenue to accrue (1) during the remainder of the fiscal year, or (2) until the next maturity date, (whichever is the latter date):

(b) Compute the amount required to pay principal and interest requirements already due and to become due during the remainder of the fiscal year, or on the next maturity date, if there are no maturities accruing during the remainder of the fiscal year;

(c) Subtract the result of paragraph (b) from the result of paragraph (a) and the result will be "surplus" funds available for investment.

In determining "anticipated revenues" the Board of Administration may consider: (a) anticipated ad valorem collections both current and delinquent, (b) anticipated auto transportation taxes, (c) anticipated gasoline taxes appropriated to the payment of bonds, and (d) any other funds which will accrue to the Interest and Sinking Fund if existing laws and appropriations remain unchanged.

Your letter contains the following figures concerning Sumter County Refunding Road Bonds Interest and Sinking Fund:

Balance in Interest & Sinking Fund	\$ 1,938.75
Balance, Kanner Bill Acct.	17,452.74
Anticipated Gas Taxes to July 1, 1938	45,000.00
Debt Service Requirements July 1, 1938	41,300.00

The records of the Board of Administration contain certified copy of a resolution of the Board of County Commissioners of Sumter County, dated December 8, 1936, authorizing the Board of Administration to remit to the paying agent named in the previously mentioned issue of refunding bonds, sufficient funds to pay the interest thereon as it matures, and directing that sufficient funds be transferred from the Kanner Bill Account whenever necessary to carry out such payment.

From the figures your letter contains it appears that if the transfer requested in the resolution of January 10, 1938 is made, the bonds can

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be purchased and the maturities accruing during the remainder of the fiscal year can be paid out of present and anticipated gasoline taxes, which, by reason of the resolution of December 8, 1936, may be used by the Board of Administration for that purpose.

I am of the opinion that you are authorized to issue a warrant for the purchase of these bonds.

April 13, 1938.

TRANSFER OF FUNDS—KANNER BILL—HARDEE COUNTY

Dear Sir:

Your letter of April 13, 1938, encloses a certified copy of resolution of the Board of County Commissioners of Hardee County, bearing date of April 9, 1938. The resolution authorizes the transfer of certain funds to the credit of the Kanner Bill account for Hardee County and several of its road and bridge districts, to the interest and sinking funds of the countywide issues and the various special road and bridge district issues. You ask to be advised as to whether or not the Board of Administration is legally authorized to make this transfer. I am of the opinion that the Board of Administration is legally authorized to make the transfer, as mentioned in the aforementioned resolution.

April 19, 1938.

**TRANSFER OF FUNDS AND PURCHASE OF BONDS—
OSCEOLA COUNTY**

Dear Sir:

Your letter of April 13, 1938, enclosed two resolutions of the Board of County Commissioners of Osceola County authorizing and requesting the Board of Administration to purchase certain countywide road bonds and Special Road and Bridge District Nos. 2 and 4 bonds with money in the respective interest and sinking funds of these issues. You state that a third resolution authorizes the transfer, from the Kanner Bill accounts, to the respective interest and sinking funds, of sufficient money to enable the Board of Administration to purchase the bonds and also pay the interest coupons maturing May 1, 1938, and that the money to make these payments has already been remitted to the paying agent.

You ask for my opinion as to whether the Board of Administration has legal authority to make the transfers and the purchases requested in the resolution.

Section 17 of Chapter 14486, Laws of Florida, Acts of 1929 (Board of Administration Act) instructs the State Treasurer, as County Treas-

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urer ex officio, to deposit the funds administered by the Board in banks at the best possible interest rate. This section also authorizes the Board of Administration to invest the funds administered by it in certain kinds of securities, including County Road bonds. There is no legal objection to the investment of interest and sinking funds of a particular bond issue in bonds of that issue; (see opinion dated December 13, 1934, page 163, 1933-34 Attorney General's Report); but the price paid for the securities purchased as investments must not be greater than their market value; (see opinion dated November 28, 1934, page 182, 1933-34 Attorney General's Report); and only "surplus" funds may be used for investment purposes; (see opinion dated March 10, 1936, page 139, 1935-36 Attorney General's Report).

The primary function of the Board of Administration is to remit applicable funds to the paying agent named in the bonds, with instruction to pay such bonds and the interest thereon as they mature. Funds needed for this purpose should not be used to make investments.

In order to determine whether or not a surplus exists in an Interest and Sinking Fund, the Board of Administration should:

(a) Add the existing balance to the anticipated revenue to accrue (1) during the remainder of the fiscal year, or (2) until the next maturity date, (whichever is the latter date);

(b) Compute the amount required to pay principal and interest requirements already due and to become due during the remainder of the fiscal year, or on the next maturity date, if there are no maturities accruing during the remainder of the fiscal year;

(c) Subtract the result of paragraph (b) from the result of paragraph (a) and the result will be "surplus" funds available for investment.

In determining "anticipated revenues" the Board of Administration may consider: (a) anticipated ad valorem collections, both current and delinquent, (b) anticipated auto transportation taxes, (c) anticipated gasoline taxes appropriated to the payment of bonds, and (d) any other funds which will accrue to the Interest and Sinking Fund if existing laws and appropriations remain unchanged.

Since the May 1st maturities are the only ones coming due during the remainder of the fiscal year, and since funds to meet them have been remitted to the paying agent, all moneys in the interest and sinking funds are available for investment. Accordingly, you are authorized to make the requested transfer from the Kanner Bill accounts to the interest and sinking funds, and to purchase the bonds requested by the county commissioners, provided that the price to be paid for them is not in excess of their market value.

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Your letter states that there is not on file in your office a general resolution of the County Commissioners authorizing the Board of Administration to transfer Kanner Bill funds to the interest and sinking fund whenever necessary to meet interest maturities, and asks if such a resolution were in effect, could the purchases be made. I am of the opinion that this inquiry should be answered in the affirmative.

April 27, 1938.

TRANSFER OF FUNDS AND PURCHASE OF BONDS—LAKE COUNTY

Dear Sir:

Your letter of April 18, 1938, encloses copy of a resolution of the Board of County Commissioners of Lake County, authorizing and requesting the Board of Administration to purchase certain refunding bonds of Special Road and Bridge District No. 5, as investments for the interest and sinking fund of the countywide refunding bonds and for the interest and sinking fund of the Special Road and Bridge District No. 5 refunding bonds. The resolution also requests that sufficient funds be transferred from the respective Kanner Bill accounts to make these purchases, and that sufficient funds be transferred from the respective Kanner Bill accounts to these interest and sinking funds to pay the semi-annual interest requirements on such bond issues due July 1, 1938.

You ask to be advised as to whether or not the Board of Administration is authorized to purchase the aforementioned bonds. It appears from your letter that the existing balances in the interest and sinking funds and the Kanner Bill accounts, and the anticipated revenue from gasoline taxes until July 1, 1938, will be more than sufficient to purchase the bonds and pay interest due July 1st on these bond issues. I am of the opinion that the Board of Administration is authorized to make the requested transfers and purchases, provided the purchase price is not in excess of the market value of the bonds. See my opinion dated April 19, 1938, in re: Board of Administration—transfer of funds and purchase of bonds—Osceola, Page 434 of this Report.

October 3, 1938.

TRANSFER OF FUNDS—LAKE COUNTY

Dear Sir:

From your letter of September 30, 1938, and a resolution of the Board of County Commissioners of Lake County attached thereto, it appears that all of the obligations of Special Road and Bridge District No. 4 have been paid, and a surplus of \$1,387.11 remains in the interest and sinking fund. The resolution requests that the Board of Admin-

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istration transfer this balance, together with certain investments, to certain other Lake County Special Road and Bridge Districts.

Your letter states that the Clerk of the Board of County Commissioners advises that the requested transfer is authorized by Chapter 18632, Laws of Florida, Acts of 1937, and you ask to be advised as to whether or not the Board of Administration is legally authorized to make this transfer.

I am of the opinion that the Board of Administration is not authorized to transfer the funds or investments of Special Road and Bridge District No. 4 to other Special Road and Bridge Districts in said county. Said Chapter 18632 does not authorize the making of any such transfers.

November 14, 1938.

**TRANSFER OF FUNDS FROM THE KANNER BILL ACCOUNT TO
INTEREST AND SINKING FUND—HARDEE COUNTY**

Dear Sir:

From your letter of November 8, 1938, and the resolution of the Board of County Commissioners of Hardee County attached thereto, it appears that the County has requested the Board of Administration to transfer certain funds from the Kanner Bill account of Special Road and Bridge District No. 3 to the interest and sinking fund account of the refunding bonds of said district. Upon such transfer being made, the County further requests that the money be transmitted to the paying agent for the payment of interest on such refunding bonds.

You request my opinion as to the Board's authority to make this transfer.

I am of the opinion that the Board of Administration is legally authorized to make the requested transfer. See Attorney General's opinion of December 5, 1934, found at page 158 of the 1933-1934 Attorney General's Report.

October 6, 1938.

**TRANSFER OF ASSETS FROM BOARD TO COUNTY—
PASCO COUNTY**

Dear Sir:

This is in reply to your letter of September 30th, to which is attached copy of resolution of the Board of County Commissioners of Pasco County dated August 22, 1938. The resolution requests the Board of Administration to assign a certain mortgage to Pasco County. The mortgage and the note it secures are held by the Board of Administra-

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tion for the benefit of the interest and sinking fund of Highlands Road and Bridge District. The resolution states that the county has received a deed to the property described in the mortgage.

Your letter states that the note and mortgage were received by the Board of Administration in a general turn-over by the county, as an asset for Pasco County Highlands Special Road and Bridge District. You ask to be advised as to whether or not the Board of Administration is authorized to comply with the provisions of said resolution.

I am of the opinion that Chapter 14486, Acts of 1929 (Board of Administration Act), does not authorize the transfer of this mortgage to Pasco County.

December 23, 1938.

**TRANSFER OF FUNDS AND PAYMENT OF INTEREST COUPONS
AND FEE CERTIFICATES—SUMTER COUNTY**

Dear Sir:

You have requested my opinion as to whether or not the Board of Administration can legally pay \$9975.00 of past due interest coupons of Sumter County and \$2145.00 of fee certificates, totaling \$12,120.00, with the sum of \$8825.00, and if necessary, transfer sufficient funds from the Kanner Bill account to make this payment. From your letter it appears that the County Commissioners have passed a resolution requesting that this be done. It also appears that a letter from the Assistant State Auditor, supplementing report No. 2037, states that the coupons are outstanding obligations of Sumter County, and are payable out of interest and sinking funds.

I am of the opinion that the Board of Administration is legally authorized to make the above mentioned transfer and payment.

LOST BONDS

December 8, 1937.

**ST. LUCIE COUNTY—REESTABLISHMENT OF LOST BONDS
AND COUPONS**

Dear Sir:

Your letter of December 1, 1937, encloses certified copy of final decree of the St. Lucie County Circuit Court, in the case of Alta Adams vs. H. E. Carter, et al. This decree reestablishes time warrants Nos. 31 and 32 of the 1922 issue of time warrants of St. Lucie County, together with interest coupons which matured January 1, 1934, and subsequent interest coupons to the date of maturity, July 1, 1936. This decree was entered

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on the express condition that the complainant give bond in favor of St. Lucie County and the Board of Administration, in the sum of \$5,000, conditioned to save said county and Board harmless from any loss which they, or either of them, may sustain as a result of the reestablishment and payment of said time warrants.

Your letter also encloses an indemnity bond executed by Standard Accident Insurance Company, as surety, and Alto Adams, as principal, the conditions of which are in compliance with the provisions of the aforementioned final decree.

You ask to be advised as to whether or not the Board of Administration is authorized to pay out the money which has been collected under special levy for the payment of the previously mentioned time warrants and interest coupons. Since they have been reestablished by judicial decree, it is my opinion that you are authorized to pay the amount of said warrants and interest coupons from the funds collected exclusively for the payment of same, upon the execution, by the complainant, of a receipt describing the warrants and coupons, and stating that the money received is accepted in payment of such securities so reestablished.

I am returning the certified copy of the final decree, together with the bond. Both should be retained by the Board of Administration, for use in the event that the lost securities are found at a later time and presented for payment.

April 18, 1938.

**REESTABLISHMENT OF LOST INTEREST COUPONS
HILLSBOROUGH COUNTY**

Dear Sir:

Your letter of April 7, 1938, encloses final decree rendered by the Circuit Court of Hillsborough County, in the case of Dauphin Deposit Trust Company vs. T. N. Henderson, et al., Chancery, No. 54995-C, and also indemnity bond of the Fidelity & Deposit Company of Maryland, and you ask to be advised as to whether or not these papers are sufficient for you to authorize the payment of the \$300.00 item out of the funds remitted to the National City Bank of New York for the payment of the coupons reestablished by the final decree.

I am of the opinion that these papers constitute sufficient authority for you to authorize such payment. The final decree and the bond are enclosed.

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REFUND OF BOND TAXES

June 29, 1937.

LEVY COUNTY—CHAPTER 18667, ACTS OF 1937—RETURN OF
MONIES HELD TO CREDIT OF SPECIAL ROAD
AND BRIDGE DISTRICTS*Dear Sir:*

This refers to your letter of June 28, 1937, with which you enclosed certified copy of resolution adopted by the Board of County Commissioners of Levy County on June 25, 1937, and also copy of Senate Chapter 18667, which was approved by the Governor on May 28, 1937, and filed in the office of the Secretary of State on May 29, 1937. You request that I advise whether, under the conditions stated in your letter, the Board of Administration would be authorized to comply with the resolution adopted by the county commissioners. Your letter reflects that the records of the Board of Administration indicate that all bonds of District 8 have been paid, and that at the time of the original turnover to the Board of Administration, it was not certified to the Board that any bonds of District 5 were outstanding, hence it was that the Board of Administration never set up any records covering outstanding bonds of District 5. Your letter further shows that you are holding the following funds to the credit of the respective districts:

Special Road and Bridge District 8	\$131.44
Special Road and Bridge District 5	609.78

The resolution of the county commissioners reflects that that Board has, after thorough investigation, determined that Special Road and Bridge District 5 never actually issued and sold any bonds, and that all of the bonds of Special Road and Bridge District 8 have been fully paid. The resolution requests that pursuant to the provisions of said Chapter, the Board of Administration remit all monies now on hand, or which may hereafter accrue, to the credit of the respective districts Nos. 5 and 8. The Chapter in question provides that whenever it shall be made to appear to the satisfaction of the Board of Administration, that any issue of bonds, as defined in Chapter 14486, of Special Road and Bridge Districts 5 and 8, of Levy County, has been fully paid, and the indebtedness discharged both as to principal and interest, or that such an issue of bonds was authorized, but never actually issued and sold and, in addition, that there are undisturbed funds in the hands of the said Board of Administration, the Board of Administration and the State Treasurer, as ex officio County Treasurer, are authorized to remit such funds to the Board of County Commissioners of Levy County, to be held as in said Act provided. This letter expresses no opinion as to whether you would be authorized hereafter to remit funds subsequently accruing. As to the funds actually on hand, it is my opinion

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that you would be authorized to comply with the terms and provisions of said Chapter 18667 and of said resolution. I express no opinion as to the constitutionality of this Act, because it is my view that administrative officials would be protected in following the provisions of a presumptively valid law, unless and until it is declared invalid by a court of competent jurisdiction.

August 19, 1937.

CHAPTER 16956, 1937 ACTS—REFUND OF TAXES—UNION COUNTY

Dear Sir:

Your letter of August 6th encloses a copy of resolution dated August 2, 1937, adopted by the Board of County Commissioners of Union County, and also copy of Chapter 18956, Laws of Florida, Special Acts of 1937. Your letter states that you have on hand an unimpounded, a stated amount of ad valorem tax funds of Union County, and a stated amount of funds in the Kanner Bill account of Union County.

The above mentioned Act recites that Union County levied a tax millage of 89 mills, pursuant to a peremptory writ of mandamus, which tax was collected from some, but not all, taxpayers; that subsequently the said peremptory writ was recalled, and the proceedings dismissed by the court, and thereupon the county commissioners cancelled all debt service millage in excess of 15 mills. The Act authorizes the Board of County Commissioners to pass a resolution directing the State Treasurer, as County Treasurer ex officio, to draw a warrant against the funds of Union County, in his possession, for the amount set forth in the resolution, and deliver same to the taxpayer named therein. Upon receipt of such a resolution, the State Treasurer, as County Treasurer ex officio, is directed to draw a warrant, voucher, check, or draft for the amount, and to the order of the person designated in the above mentioned resolution, against any funds in his possession to the credit of Union County, and to deliver same to the person named, and to pay same upon presentation.

I have examined the resolution you enclosed, and it appears to follow the provisions of the Act. The amount you stated as on hand to the credit of Union County, appears to be sufficient to comply with the provisions of the resolution.

You request my opinion as to whether or not the Board of Administration is authorized to use these monies in making remittances to the parties named in the resolution.

The above Act does not specifically authorize the Comptroller to draw the warrants, and the Governor to countersign them, before the State Treasurer, as County Treasurer ex officio, is required to make

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payment, but I am of the opinion that the Comptroller and the Governor are legally authorized to take such action, in order to carry out the clear intent of the Legislature. If such action is taken by the Comptroller and Governor, I am of the opinion that the State Treasurer, as County Treasurer Ex Officio, is authorized to make payment in accordance with the directions contained in the aforesaid resolution.

I express no opinion as to the constitutionality of Chapter 18956, as I am of the opinion that administrative officers are legally authorized to comply with the provisions of an Act of the Legislature, unless it has been declared unconstitutional by a court of competent jurisdiction.

August 21, 1937.

RETURN OF TAX LEVY—OKEECHOBEE COUNTY

Dear Sir:

From your letter of August 20th and enclosures, it appears that the tax of 120 mills was levied on the taxable property of Okeechobee County, pursuant to a peremptory writ of mandamus, in the case of State, ex rel., Thompson, relator, vs. Durrance, et al., respondents; that on July 17, 1937, the court entered an order, cancelling the aforementioned tax levy. It now appears that the Clerk of the Circuit Court desires advice as to how funds collected pursuant to this Act, may be remitted to the taxpayers. Your letter states that the funds which the Clerk wishes returned to the taxpayers, are in the hands of the Board of Administration.

The Board of Administration has no authority to return to the county taxes collected and remitted for the purpose of paying bonds and interest thereon. Such a return of taxes collected could be made only pursuant to an Act of the Legislature authorizing same.

SPECIAL TAX LEVIES

March 4, 1937.

VOLUSIA COUNTY—TURNBULL SPECIAL ROAD AND BRIDGE DISTRICT—PAYMENT OF INTEREST AFTER MATURITY OUT OF SPECIAL LEVY PROVIDED FOR SAID PURPOSE

Dear Sir:

I have your letter of February 23, 1937, with which you enclosed certified copy of a judgment recovered in the Circuit Court of Volusia County, against said county, by one F. M. Ford, the plaintiff therein. You also enclosed other documents, and from your letter and these documents, it appears that the plaintiff in said cause was the holder of certain Special Road and Bridge District bonds of Turnbull Special Road and Bridge District of Volusia County, Florida; that said bonds were not paid at maturity; but that they were thereafter paid through a liquidation account, in four instalments.

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It appears from your letter that you have on hand a balance of \$2530.67 derived from a 15½ mill tax levied, assessed and collected on property in said Special Road and Bridge District, 2½ mills of which was appropriated by the Volusia County Commissioners, by resolution dated March 22, 1935, for the payment of interest on the aforesaid bonds, at the rate specified in the bonds themselves, from the date of maturity to the date of payment thereof. These bonds bore interest at the rate of 6%. You request to be advised whether the Board of Administration has the authority to pay the judgment referred to, out of said funds on hand to the credit of the district; and if so, whether the Board is under any duty to do so.

From the papers submitted, and other matters concerning which I have made inquiry, it appears that these bonds were paid and surrendered with the understanding both on the part of the holder and on the part of the county officials, that this interest after maturity would, if legally possible, be paid. In answer to your inquiry, I beg to advise that this judgment apparently was secured against the wrong party, inas much as the interest was adjudicated as a liability of Volusia County, rather than of the Special Road and Bridge District. For this reason, it is my opinion that you may not satisfy a judgment against the county, out of funds to the credit of the district. However, in view of the special circumstances of this case, it would seem to me that if you were furnished with proper certificate from the county commissioners, through their authorized representative, acting in behalf of the said district, as to the liability of the district for the interest in question, you might, upon such certificate and upon being satisfied that the judgment against the county therefor, has been cancelled, make payment of the claim evidenced by said certificate, out of the monies hereinbefore referred to. Clearly, there seems to have been a recognition, on the part of the district, of its liability, as otherwise the fund above referred to would not have been set aside for this purpose.

May 28, 1937.

ST. LUCIE COUNTY—APPLICABILITY OF SPECIAL LEVY FUNDS

Dear Sir:

From your letter of May 17th and from information which you have subsequently furnished me, it appears that:

One Alton M. Ake, alleging himself to be the owner and holder of certain securities, including among others, St. Lucie County Public Road and Bridge time warrant No. 34, due March 1, 1936, instituted suit and recovered judgment awarding peremptory writ of mandamus, which issued out of the Circuit Court of St. Lucie County, commanding a special levy of taxes for the purpose of paying said securities. This peremptory writ issued October 24, 1935.

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One Robert F. Neafie later instituted a similar suit, alleging himself to be the owner and holder of certain securities including, among others, the said warrant. He likewise recovered final judgment awarding peremptory writ of mandamus, which issued out of the same court on October 8, 1936.

Remittances derived from both levies have reached you. One E. O. Denison appears to be the attorney of record both for Ake and for Neafie. He presented the warrant without a statement of the person on whose account it was presented, and requested that the balance derived from the Ake levy be first applied, and any remaining balance be paid from the Neafie levy. It now appears that Neafie owns all unpaid bonds and coupons described in the Ake writ; and that Ake, through his said attorney of record, is consenting to the use of said levy to apply on this warrant.

With reference to the foregoing situation, you desire advice as to whether you may safely make payment in this manner. I am of the opinion that if you are satisfied that Mr. Denison is the attorney of record both for Ake and for Neafie, such payment is proper.

I know of no decisions of our Supreme Court expressly covering this point. However, it is well settled that where there is a default in the performance of a duty to levy with reference to a particular issue of bonds, a holder of some of the bonds may coerce the full performance of that duty, both on behalf of himself and on behalf of other bondholders not before the court. It is further settled that such a bondholder may, instead of coercing a levy for the benefit of all, by mandamus, coerce a levy sufficient to produce a sum with which to pay the securities of which he alleges himself to be the holder. In either event, the levy, as I understand it, is not for the particular and exclusive benefit of the individual who happens to hold securities of the issue for which the levy is ordered. The primary and controlling purpose of such a levy is to provide funds with which to discharge the obligations of the taxing unit, to which the duty to make a levy is appurtenant.

See *Humphrey vs. State, ex rel.*,
108 Fla. 92, 145 So. 868;
Treat vs. State, ex rel.,
118 Fla., 899, 160 So. 498;
State ex rel. vs. Snow,
113 Fla. 241, 181 So. 393;
State ex rel. vs. Vickers,
115 Fla. 661, 156 So. 19;
State vs. Rhodes, 122 Fla. 262,
165 So. 267; of
Wauchula vs. State,
115 Fla. 26, 154 So. 889.

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Upon principle, therefore, when a levy has been specially ordered for the payment of a particular bond or warrant, to the exclusion of other bonds or warrants, and the levy is made pursuant only to peremptory writ of mandamus; and thereafter such bond or warrant is negotiated to another, funds derived from such levy may still be used for the purpose of discharging the obligation evidenced by said warrant or bond. In this particular instance, it affirmatively appears that the party securing the first levy is consenting to this payment through his attorney. It is, therefore, not necessary to decide, and I reserve the question as to, whether such payment would be authorized without such consent. I would suggest that any warrant in this case be made payable to E. O. Denison, as attorney of record for Alton M. Ake, and as attorney of record for Robert F. Neafie, and also jointly payable to Robert F. Neafie.

August 20, 1937.

STATE, EX REL., METROPOLITAN LIFE INSURANCE CO. VS.
BECKETT, ET AL.,—NO. 9145-L—PINELLAS COUNTY

Dear Sir:

Your letter of August 19th encloses certified copy of amended stipulation in the above case. You state that you have a balance of more than \$3200, which is the proceeds of a special tax levy pursuant to peremptory writ of mandamus in the above case, for the payment of certain interest coupons described therein.

The amended stipulation, executed by the attorneys of record, authorizes these funds to be used for interest and sinking fund purposes on the refunding bonds of St. Petersburg Special Road and Bridge District No. 13. You ask my opinion as to whether or not, in view of this stipulation, the above mentioned funds may now be applied as regular interest and sinking fund money to the credit of Special Road and Bridge District No. 13, and applied to the payment of currently maturing interest, principal and the creation of a sinking fund, and for the purchase of bonds with surplus money that may be available over and above the interest and sinking fund requirements.

It is my opinion that you are now authorized to use these funds for any or all of the above mentioned purposes.

MISCELLANEOUS

April 5, 1937.

PINELLAS COUNTY—CANCELLATION OF BONDS PURCHASED BY
SPECIAL ROAD AND BRIDGE DISTRICT NO. 11

Dear Sir:

I have your letter of April 1, 1937, together with enclosures, from which it appears that Special Road and Bridge District No. 11 of Pinellas

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County, was created from a portion of the territory embraced in Special Road and Bridge District No. 1, and that serial bonds of said district were issued in 1925, in the sum of \$1,000,000.00. It also appears that, by the creation of Special Road and Bridge District No. 13, another overlap was occasioned. It appears that you have been advised by the Clerk of the Circuit Court of Pinellas County that, upon the completion of construction of the roads and bridges in district No. 11, a balance remained in the construction fund, which was held for some years, and then was invested in bonds of the same district; that the Board of County Commissioners makes no tax levy for maintenance in said district, as it is covered by districts 1 and 13, and a tax for maintenance is levied in district 13, which has a much larger assessed valuation; that further, a number of the roads have been taken over by the State Road Department for maintenance.

With the balance remaining in the construction fund above referred to, the Board of County Commissioners, acting for and on behalf of the district, purchased \$53,000.00 of Special Road and Bridge District No. 11 refunding bonds issued in 1932, to refund the old district No. 11 bonds. These bonds, so purchased, were sent to the Board of Administration, with instructions to place them in the interest and sinking fund of the district, and then to cancel them and return the same, cancelled, to the Board of County Commissioners. You state that on March 30, 1937, the Board of Administration directed you to refer the matter to this office for opinion, and after receipt of such opinion, to present the matter again to the Board. You ask that I advise you whether the Board of Administration is authorized to receive these bonds, to credit them to the interest and sinking fund, and then to cancel them. Please be advised that I know of no reason, under the law, why this transaction, resulting in a decrease of the outstanding indebtedness of the district, may not be carried out.

September 15, 1937.

**CHAPTER 18784, ACTS OF 1937—CANCELLATION OF BONDS OF
SPECIAL ROAD AND BRIDGE DISTRICT NO. 12—
PINELLAS COUNTY**

Dear Sir:

Your letter of September 9th encloses certified copy of resolution adopted by Pinellas County Board of County Commissioners' on September 7, 1937, together with copy of Chapter 18784, Acts of 1937.

This Act recites that Special Road and Bridge District No. 12 of Pinellas County has \$415,000 of bonds outstanding, and that the district is in default as to principal in the aggregate sum of \$60,000, and as to interest in the aggregate sum of \$66,600, and that a large portion

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of these bonds are owned as investments by the various interest and sinking funds of Pinellas County, and that some are in the hands and under the control of the State Board of Administration.

The Act states that the Board of Administration is authorized and directed, in its *discretion*, to cancel and mutilate \$200,000 of the bonds of Special Road and Bridge District No. 12, held by such Board of Administration, and also to cancel and mutilate the attached interest coupons.

The resolution referred to above requests the Board of Administration to cancel \$200,000 of particularly described bonds of Special Road and Bridge District No. 12.

You request my written opinion as to whether or not, first, the Board of Administration is authorized to comply with the Act and resolution; and, second, if it is the duty of the Board of Administration to comply with such Act and resolution.

As previously pointed out, the provisions of the Act are not mandatory, and, therefore, I am of the opinion that the law does not require the Board of Administration to cancel these bonds. I am of the opinion that the Board of Administration may, if it desires, exercise the *discretion* vested in it by the above mentioned Act, and pursuant to and exercise of that *discretion*, cancel the bonds in question. I express no opinion as to the constitutional validity of the Act, as I am of the opinion that administrative officers are authorized to comply with the provisions of a legislative act unless and until same has been declared invalid by a court of competent jurisdiction. Neither do I express any opinion as to the desirability of the proposed cancellation of \$200,000 of Special Road and Bridge District No. 12 bonds.

July 5, 1938.

ACCEPTANCE OF PLAN OF COMPOSITION OF CITY OF ARCADIA
—ST. JOHNS COUNTY

Dear Sir:

This is in reply to your letter requesting an opinion as to whether or not the Board of Administration would be authorized to accept the plan of composition and file the proof of claim enclosed in your letter.

You will note that the form of proof of claim contains the following language: "Claimant hereby approves and accepts the plan of composition of the indebtedness of the City of Arcadia, Florida, as set forth in said City's plan of composition dated February 21, 1938."

I am of the opinion that the Board of Administration is not authorized to file this proof of claim or to accept the plan of composition

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referred to therein. See the opinion of the Attorney General with reference to a similar matter, dated November 26, 1937, concerning acceptance of the plan of composition of the Town of Gulfport.

May 19, 1938.

PAYMENT OF REFUNDING EXPENSES—SPECIAL ROAD AND
BRIDGE DISTRICT NO. 1 OF ALACHUA COUNTY

Dear Sir:

Your letter of March 10, 1938, enclosed certified copy of a resolution of the Board of Bond Trustees of Alachua County Special Road and Bridge District No. 1. This resolution requests the Board of Administration to remit \$2,086 to the Trustees as reimbursement for amounts expended by the Trustees from their maintenance fund, for expenses pertaining to the refunding of the bonded indebtedness of the district. You ask to be advised as to the Board's authority to comply with this request. Reply to your question has been delayed pending the ascertainment of certain facts necessary to a decision on this question.

The itemized statement set forth in the resolution reveals that the Bond Trustees made the following payments:

1. Per diem and expenses of Board members attending 44 special meetings during the years 1934 to 1937, both inclusive	\$ 876.00
2. Secretarial work 44 meetings	440.00
3. Board secretary (extra time in New York)	30.00
4. Long distance and telegrams 1933-1937	50.00
5. Attorneys fees 1933-1937	690.00
Total	\$2,086.00

On January 14, 1936, the Board of Bond Trustees entered into a contract with Ed. C. Wright & Company, for the refunding and exchange of the outstanding bonds of the district. According to the terms of the contract, Ed. C. Wright & Company was to effect such refunding and exchange within eighteen months, and bear *all expense incident to the carrying out of the refunding plan*, and the district was to pay Ed. C. Wright & Company \$25,000 for services rendered and expenses incurred in procuring the bondholders' acceptance of the plan and of the refunding bonds. Subsequently the Board of Bond Trustees advised the Board of Administration that Ed. C. Wright & Company had complied with its contract and, pursuant to request of such Board, Ed. C. Wright & Company was paid \$25,000 by the Board of Administration, from funds to the credit of the district.

This road and bridge district was created pursuant to Chapter 7414, Special Acts of 1917. Section 11 thereof provides that all money col-

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lected for road purposes within the district shall be used for construction and maintenance of roads within the district, *and for the payment of the incidental expenses of the Board of Bond Trustees.*

I am advised that the legal expenses incurred in connection with the preparation of the refunding resolution, the prosecution of the validation proceedings, and the procurement of an approving opinion by recognized bond attorneys, were all paid by Ed. C. Wright & Company. I am of the opinion that the itemized expenses which were incurred prior to the date of the contract for the refunding of the bonded debt, constitute incidental expenses of the Board of Bond Trustees, properly payable from funds in its possession, and that the Board of Administration is not authorized to reimburse the trustees for these expenses. The expenses incurred subsequent to that date occupy the same status, so far as the Board of Administration is concerned, but if they were "expenses incident to the carrying out of the refunding plan," Ed. C. Wright & Company was obligated by its contract to pay them.

One of the items listed is for legal services in connection with a proposed second refunding of the bonded indebtedness of the district. The Board of Administration is not authorized to reimburse the district for this expenditure.

June 3, 1938.

REINSTATEMENT OF UNREFUNDED BONDS—MANATEE COUNTY

Dear Sir:

I acknowledge receipt of your letter of May 23, 1938, enclosing copy of resolution of the Board of County Commissioners of Manatee County dated April 27, 1938.

It appears, from the letter and resolution, that Manatee County has heretofore issued \$1,500,000 of 5% refunding bonds to refund a like amount of 5½% county road bonds. It also appears that the owner of twenty-five of the original bonds is not willing to exchange them for refunding bonds, but will accept interest on them at the refunding rate, and thus waive the ½% differential. The county commissioners request the Board of Administration to reinstate these twenty-five bonds and to pay the interest due, and to become due, thereon, at the refunding rate, out of money in the interest and sinking fund of the refunding bonds.

Your letter advises that in addition to the previously mentioned twenty-five bonds, there are outstanding and unexchanged, forty-seven other original bonds, and you ask to be advised if the Board of Administration is authorized to comply with the provisions of this resolution.

The county commissioners have previously advised this Board that the original bonds had been refunded by the \$1,500,000 issue of refunding

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bonds, and the records of this Board were adjusted accordingly. It now appears that these twenty-five bonds have not, in fact, been refunded, but on the contrary, are still outstanding. Therefore, I am of the opinion that the Board of Administration is authorized to revise its records so as to show that these twenty-five bonds are outstanding. However, I am of the opinion that the interest and sinking fund of the refunding bonds cannot be used to pay interest on these original bonds, for the reason that this interest and sinking fund consists of ad valorem taxes levied solely for the refunding bonds and gasoline taxes appropriated in the county budget solely for the refunding bonds. See the opinion on rehearing in the case of *State, ex rel. Lawler vs. City of West Palm Beach*, 174 So. 736. It is improper to use a sinking fund for the joint use of one issue of bonds and a part of another issue of bonds.

October 1, 1937.

ADMINISTRATIVE EXPENSES

Dear Sir:

Today I received your letter bearing date September 30, 1937, reading as follows:

"For the past several years the appropriations for salaries and expenses of the State Board of Administration have been paid out of the interest collected on bank deposits of the board. By Federal Statute and rulings thereunder, the banks are not permitted to pay interest on demand deposits since August 23, 1937. It is necessary for the State Board of Administration to use other money to defray its operating expenses. The Legislatures appropriated certain amounts to be paid out of special funds of the Board of Administration, and not out of the State General Revenue Fund.

"Therefore, the appropriation for the Board of Administration expense is from funds in the hands of the Board of Administration, which consist of monies received from the Second Gasoline Tax, Ad Valorem Tax, Auto Transportation Mileage Tax, Interest on Investments and Interest on Bank Deposits. It has been, and is, the policy of the Board to consider that the respective Counties should bear the expense pro rata as nearly as possible in proportion to the work done in their behalf. As nearly as can be estimated, it is deemed fair and just to put it on the same proportionate basis on which they receive the Second Gasoline Tax allocation. Hence it could be handled in either one of two ways, namely:

1. In this distribution of the gas tax each County could be credited with its proportionate allotment, and warrant could

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be drawn against and charged each of the eighty-seven Counties for their respective proportions of the expenses. This method would require the issuance and payment of sixty-seven warrants for each such distribution, and the corresponding bookkeeping in connection therewith.

2. Before the distribution to the Counties, one warrant could be issued, for the amount necessary to cover the expenses for a given period (within the appropriation), then make proportionate distribution of the remainder of the Second Gasoline Tax to the Counties. This plan would require the issuance of only one warrant to cover the expense item.

"The result of the Counties would be exactly the same in both cases. That being true, it would logically be considered preferable to follow the second plan.

"At a meeting of the Board of Administration held today, it was decided that in paying the expenses of the Board pursuant to the Legislative appropriation for such purposes, whenever necessary it was considered advisable by the Board that warrant for whatever amount was found to be necessary (within the appropriation) be issued to the 'Salaries and Expense Fund of the State Board of Administration' against the 'State Roads Distribution Fund,' and make distribution of the remainder to the Counties according to the allotment, rather than to issue separate warrants to each County. This would be according to plan 2.

"The Board requests your opinion as to the legality of such procedure."

I am of the opinion that the Board of Administration is legally authorized to follow the procedure decided upon by it, and outlined in the above letter.

October 22, 1937.

CREDIT MEMORANDUM—ST. LUCIE COUNTY

Dear Sir:

From your letter of September 20th, it appears that, pursuant to a peremptory writ, a special tax was levied to pay a certain negotiable note issued by St. Lucie County; that \$607.29 has been paid on it, leaving a balance of \$392.71 due; and that through various attempted assignments, the relator's interest has been transferred to the Clerk of the Circuit Court of St. Lucie County. The Clerk requests that you execute a "credit memorandum" for the balance due, which he may use in payment of taxes.

STATE BOARD OF ADMINISTRATION

I am of the opinion that neither the Board of Administration nor you, as County Treasurer ex officio of St. Lucie County, are authorized to execute such a credit memorandum for use in payment of taxes.

September 6, 1938.

PAYMENT FOR VALIDATION CERTIFICATES ON REFUNDING BONDS—HILLSBOROUGH COUNTY

Dear Sir:

To your letter of August 6th is attached a photostatic copy of a refunding contract of Hillsborough County dated May 1, 1938, and also bill of the Clerk of the Circuit Court for \$321.80 for services rendered in signing validation certificates on 1609 highway refunding bonds of Hillsborough County. It appears that the Board of County Commissioners have approved the bill and ordered it paid out of the Commissions and Expense account, the funds of which are in the possession of the Board of Administration. Your letter states that the funds in this account were raised from a tax levy made in Hillsborough County for the purpose of paying refunding expenses, and you ask for my opinion as to whether or not the Board of Administration is legally authorized to pay this bill out of money in the aforementioned account.

I have examined the photostatic copy of the refunding contract, and it provides that all expenses incident to the validation and execution of the refunding bonds shall be borne by the county, and not by the refunding agent. I am of the opinion that the Board of Administration is legally authorized to pay the aforementioned bill out of funds in its hands to the credit of the aforementioned Commission and Expense Account.

July 5, 1938.

PAYMENT OF REFUNDING FEES—LEE COUNTY

Dear Sir:

This is in reply to your letter of May 23, 1938, containing copy of a resolution of the Board of County Commissioners of Lee County, requesting the Board of Administration to pay the refunding agents of Lee County \$20.00 for each refunding bond exchanged by them. The refunding contract entered into between the County and its agents, provides for this payment.

Your letter states that 602 refunding bonds have been exchanged, and you have orally advised at the present time 685 of the 1055 refunding bonds authorized, have actually been exchanged for a like amount of outstanding bonds.

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Previous opinions of the Attorney General have upheld the authority of the Board of Administration to pay refunding fees. See 1933-1934 Attorney General's Report, pages 171 and 174. In each case the factual situation was such that at least 75 per cent of the refunding bonds had actually been exchanged at the time payment of the fee was requested. In this respect the present case differs from those previously presented.

You ask to be advised as to the Board's authority to pay the refunding fees requested in the aforementioned resolution. I am of the opinion that the Board of Administration is authorized to make this payment, if it appears to the Board that the refunding plan has been completed to the extent that sufficient refunding bonds have been exchanged to reasonably assure the accomplishment of the purpose of the refunding plan.

November 29, 1938.

REPAYMENT OF BORROWED FUNDS—LAKE COUNTY

Dear Sir:

From your letter of November 7, 1938, it appears that the Board of Administration, pursuant to request of Lake County, authorized a transfer of the sum of \$22,000 from the interest and sinking fund of Road and Bridge District No. 10 to the interest and sinking fund of Road and Bridge District No. 6, of Lake County. The transfer authorized was to be in the nature of a temporary loan. The purpose of the transfer was to permit District No. 6 to meet a particular maturity of principal and interest on its bonds.

The Board of County Commissioners of Lake County has passed a resolution requesting that the Board of Administration repay \$4000 of this loan. You have orally advised that repayment of this amount will not prevent the District from meeting its debt service requirements during the remainder of the fiscal year, and you ask to be advised as to the authority of the Board of Administration to comply with the request contained in the county's resolution.

I am of the opinion that the Board of Administration is authorized to comply with this resolution. See my opinion dated today, with reference to a similar matter in Palm Beach County.

November 29, 1938.

REPAYMENT OF BORROWED FUNDS—PALM BEACH COUNTY

Dear Sir:

From your letter of November 8, 1938, and the papers attached thereto, it appears that, in an effort to meet a particular maturity of Special

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Road and Bridge District No. 5 bonds, the Board of County Commissioners of Palm Beach County adopted a resolution transferring \$300 from the District's maintenance fund and \$2000 from the General Revenue fund, to the interest and sinking fund of Special Road and Bridge District No. 5. The resolution recited that it was to be "temporarily transferred" and that the funds transferred were to be considered as "temporary loans to be repaid as soon as funds are available." The resolution was made contingent upon its approval by the Comptroller, which was given on October 15, 1936. It now appears that pursuant to resolution dated July 25, 1938, the county commissioners are requesting the Board of Administration to repay the \$2000 previously loaned by the General Revenue fund to the interest and sinking fund of District No. 5, and you request my opinion as to the authority of the Board of Administration to comply with this resolution.

The Board of Administration is not authorized to borrow money to meet a particular maturity. See opinion of my predecessor at page 173 of the 1933-1934 Attorney General's Report. However, the funds were accepted by the Board of Administration and disbursed in the payment of bonds. Although the letter transmitting the money to the State Treasurer did not specifically state that it was a loan, yet previous correspondence with the Board of Administration revealed that the transfer was to be a temporary loan, rather than a gift. You have orally advised that a repayment of this amount will not prevent the District from meeting its debt service requirements during the remainder of the fiscal year. Since the Board of Administration accepted and spent the money tendered as a loan, it is now authorized to place the lender in status quo by returning the amount originally accepted. I am of the opinion that the Board of Administration is, under the circumstances above set forth, authorized to comply with the county's resolution.

SECTION 33
STATE LABOR INSPECTOR

August 23, 1937.

GOVERNOR AUTHORIZED TO APPOINT AND PAY UNDER SECTION
5961 C. G. L., 1927

Dear Sir:

I have your letter of the 19th instant calling attention to Chapter 17,707, the General Appropriation Act of 1937, failing to provide any appropriation for the State Labor Inspector and making inquiry if you have authority to appoint a State Labor Inspector under Chapter 6918, Acts of 1915, and pay him according to said Act.

Section 5961, Compiled General Laws of Florida, 1927, originally Section 22 of Chapter 6488, Acts of 1913, and amended by Section 3 of Chapter 6918, Acts of 1915, reads as follows:

"The said State labor inspector shall receive an annual salary of eighteen hundred dollars, payable monthly out of any monies not otherwise appropriated, as other salaries of State employees, together with such necessary traveling expenses as may be incurred by him or her in making such trips of inspection not to exceed eight hundred dollars. The inspector shall also be allowed all office stationery and other expenses not to exceed two hundred dollars per year, such expenses to be paid out of any monies not otherwise appropriated."

In reply to your inquiry I beg to say in my opinion the above quoted Section is a continuing appropriation and that you are authorized to appoint and pay a labor inspector for salary, necessary traveling expenses and office expenses in the amounts provided in said Section.

SECTION 34

STATE LIVE STOCK SANITARY BOARD

APPROPRIATIONS—ANTI-HOG CHOLERA SERUM, CHAPTERS
15,867 OF 1933, 17,059 OF 1935, AND 18,153 OF 1937

Dear Sir:

I am in receipt of your letter of the 9th instant, the body of which reads as follows:

"Will you please advise whether or not any unused balance in the first year of the appropriations under Chapter 15867, Acts of 1933, Chapter 17059, Acts of 1935, and Chapter 18153, Acts of 1937, may be carried forward into the second year.

"It is noted that these Acts do not contain a provision that such balances may be used in the second year similar to that contained in the general appropriation acts."

Sections 3 and 4 of Chapter 15,867 of 1933, read as follows:

"3. The sum of \$25,000.00 is hereby appropriated annually for two years out of any funds in the State Treasury for the purchase and distribution of anti-hog cholera serum and hog cholera virus."

"4. All monies accruing from the sale of anti-hog cholera serum and hog cholera virus, as provided in this Act, shall be deposited in the State Treasury to the credit of the State Live Stock Sanitary Board in a fund to be known as the Serum Fund, which shall be used as a revolving fund for the further purchase and distribution of anti-hog cholera serum and hog cholera virus as provided in this Act."

Sections 3 and 4 of Chapter 17059 are similar to the above. Sections 3 and 4 of Chapter 18,153 are also similar except that the annual appropriation is \$50,000.00 instead of \$25,000.00 provided for in the first two mentioned acts.

Replying to your inquiry I beg to say in my opinion any unused balance in the first year under the appropriation in each of said acts may be carried forward into the second year. In this connection, I refer you to an opinion of this office under date of July 30th, 1936, appearing on page 408 of the Biennial Report of this office for the years 1935-1936, which letter discusses at length similar appropriation statutes.

July 16, 1938.

INDEMNITY PAYMENTS TO OWNERS OF CATTLE UNDER CHAPTER 18152 OF 1937—GENERAL APPROPRIATION ACT,
CHAPTER 17707 OF 1937

Dear Sir:

I am in receipt of your letter of the 6th instant, relative to the above captioned matter.

STATE LIVE STOCK SANITARY BOARD

The questions presented appear to be as follows:

- (1) Whether payments should be on the basis of calendar years or fiscal years.
- (2) Whether pro-rata payments may be made in case of insufficiency of funds.
- (3) Whether payment of less than general pro-rata is proper where owner has received approximately the appraised value of animal.

The first two questions are presented by your letter and the third question was presented by Dr. Knapp, State Veterinarian in our discussion of the matter.

Your attention is first called to Sections 1 and 2 of Chapter 18152, reading as follows:

"Section 1. That the State Live Stock Sanitary Board be, and it is hereby, authorized and empowered to indemnify and reimburse the owners of animals condemned and destroyed by order of the Board in cases where such animals have reacted to the tuberculin test or the Bang disease blood test, provided, however, that such indemnity or reimbursement shall not exceed the sum of \$12.50 for any one animal, and providing such indemnity or reimbursement shall be paid only to owners of dairy cows producing twenty pounds of milk per day, for an average of at least eight months per year.

"Section 2. For the purpose of carrying out the provisions of this Act, there is hereby made available out of the monies otherwise appropriated to the State Live Stock Sanitary Board from the proceeds of $\frac{1}{2}$ mill Special Millage, the sum of Twenty-five Thousand Dollars (\$25,000.00) for the year 1937, and a similar sum for the year 1938."

Answer to Question 1:

Upon reading Section 2 of said Act above quoted, the first impression would appear to be that the appropriation is intended for calendar years instead of fiscal years. It will be noted, however, that the money made available is out of monies otherwise appropriated to the State Live Stock Sanitary Board from the proceeds of one-half mill Special Millage.

We now turn to the General Appropriation Act, Chapter 17707, the title to which Act recites that the appropriations therein are for the annual periods beginning July 1, 1937, and July 1, 1938. The said General Appropriation Act on page 18 under the heading of Live Stock Sanitary Board appropriates for salaries the sum of \$82,000, and for necessary and regular expenses the sum of \$137,000. Before stating such amount it also provides that the same are to come exclusively from

STATE LIVE STOCK SANITARY BOARD

the proceeds of one-half mill Special Millage. I take it, therefore, that the appropriation of \$25,000 in Chapter 18152 must come out of the above mentioned appropriated sum of \$137,000 provided for necessary and regular expenses.

Your attention is also called to the last part of Section 1 of Chapter 18152 above quoted, which provides that the indemnity of reimbursement under said Act shall be paid only to owners of dairy cows producing twenty pounds of milk per day for an average of at least eight months per year.

I am advised by the State Veterinarian that no suitable records or statistics were kept in relation to the said proviso until after the passage and approval of said Act on June 8, 1937.

Taking all the above into consideration, it is my opinion that the appropriation of \$25,000 by said Chapter 18152 does not relate to the calendar years of 1937 and 1938, but relates to the fiscal years beginning July 1, 1937, and July 1, 1938.

Answer to Question 2:

Again referring to the latter part of Section 1 of Chapter 18162 above quoted, it will be noted that the statute recites that the indemnity or reimbursement shall not exceed the sum of \$12.50 for any one animal. Should the number of cattle for which indemnity may be due be such as to exceed the appropriation for any one year if paid upon the full pro-rata amount of \$12.50 per animal allowed, it is my opinion that the sum allowed for the year should be pro-rated on a smaller basis, in order to allow some compensation to all parties to whom compensation may be due.

Answer to Question 3:

If the owner of the animal has received its full appraised value, either from payments by the Federal Government or from sale of same for beef purposes, or from both combined, I do not think it was the intention of the Legislature to give such owner any compensation under Chapter 18152. If, however, such receipts are less than the appraised value, such owner should receive the same pro rata as other owners, except in cases where the difference between the appraised value and amount received is less than the general pro rata, in which event he should receive only the amount of such difference.

The theory of the Act, as I understand it, is to compensate in a measure for loss by such owners, and is not in any sense intended as a gratuity from the State over and above the value of the animal.

SECTION 35

STATE OFFICERS—MISCELLANEOUS

January 26, 1937.

APPOINTEES—WHEN GOVERNOR AUTHORIZED TO SUSPEND

Dear Sir:

I am in receipt of your letter of this date requesting my opinion as to whether you have the right to remove appointees of former Governor Sholtz to various appointive offices in the State, quite a number of whom you say were appointed during the month of December, 1936. You further state that these officers were not elective officers and they were not nominated in the Primary.

In reply I beg to say that Section 15 of Article IV of the State Constitution appears to control in the matter of suspensions by the Governor. For your convenience I quote the same as follows:

"All officers that shall have been appointed or elected, and that are not liable to impeachment, may be suspended from office by the Governor for malfeasance, or misfeasance, or neglect of duty in office, for the commission of any felony, or for drunkenness or incompetency, and the cause of suspension shall be communicated to the officer suspended and to the Senate at its next session. And the Governor, by and with the consent of the Senate, may remove any officer, not liable to impeachment, for any cause above named. Every suspension shall continue until the adjournment of the next session of the Senate, unless the officer suspended shall, upon the recommendation of the Governor, be removed; but the Governor may reinstate the officer so suspended upon satisfactory evidence that the charge or charges against him are untrue. If the Senate shall refuse to remove, or fail to take action before its adjournment, the officer suspended shall resume the duties of the office. The Governor shall have power to fill by appointment any office, the incumbent of which has been suspended. No officer suspended who shall under this section resume the duties of his office, shall suffer any loss of salary or other compensation in consequence of such suspension. The suspension or removal herein authorized shall not relieve the officer from indictment for any misdemeanor in office."

Your attention is further called to the recent decision of our Supreme Court in the case of *State vs. Coleman*, 115 Fla. 119, 155 So. 129, in which you will note that the Court has made an extensive review and comment upon the above quoted provisions of the Constitution. You will note that the Court has defined at some length various constitutional grounds for suspension and has further gone into Executive

STATE OFFICERS—MISCELLANEOUS

Orders for such suspensions and the requirements of the same. I quote you from the body of said opinion as follows:

"The power of suspension, being solely in the Governor, must be limited to the grounds stated in the Constitution. The Senate is nothing less than a court provided to examine into and determine whether or not the Governor exercises the power of suspension in keeping with the constitutional mandate. No more solemn duty is imposed on the Governor and the Senate, and in the performance of that duty they should illuminate their course by the constitutional mandate and its light protect society, and be just to the officer suspended."

"The power of the Governor to suspend and of the Governor and the Senate to remove is not an arbitrary one. Both are guarded by constitutional limitations which should be strictly followed. It has been charged that this is an annual power to vest in the Governor and the Senate, and so it is, but the people have lodged it there. The position of Governor and Senator is one vested with great dignity and responsibility and we are not to presume that these places will be filled by the people with men who do not measure up to the responsibility imposed in them. At any rate the duty imposed should be exercised with great care and caution because, when done, the result is final as no other power is authorized to interfere."

Under the above quoted provision of the State Constitution, as well as the decisions of our Supreme Court, it appears that you are authorized to suspend officials mentioned in your letter provided such suspension is based upon one or more of the constitutional grounds of suspension enumerated.

March 29, 1938.

EXTRA COMPENSATION FROM FEDERAL FUNDS

Dear Sir:

I am in receipt of your letter of the 10th instant, the body of which reads as follows:

"Since the salaries of Cabinet Officers are fixed by law, can a Cabinet Officer who receives his full compensation from the general revenue fund receive additional compensation out of any other fund handled by the State Treasurer or otherwise?

"In connection with the audit now being made of the accounts of the State Superintendent of Public Instruction it is noted that Mr. English is receiving compensation at the rate of \$5,000.00 per annum from the general revenue fund and at the

STATE OFFICERS—MISCELLANEOUS

rate of \$1,500.00 per annum from the Federal George Dean Home Economics Fund, and it is desired to know whether this is proper."

Your attention is called to Sections 15(h) to 15(p) of United States Code Annotated, Title 20, making appropriations for the further development of vocational education in the several states and territories, and providing that the several states and territories shall be required to match by State or local funds, or both, certain percentages of appropriations.

Section (e) appearing on page 40 of Vocational Education Bulletin No. 1, revised February 1937 by the Federal Office of Education, is a statement of policies for the administration of vocational education and reads as follows:

"The word 'director' is used to include the Executive Officer of the State Board for vocational education. Since the Executive Officer of the State Board of vocational education is responsible for the general administration of the program of vocational education, State plans may include provisions for the reimbursement of his salary and necessary travel based on the amount of time which he devotes to the general administration of the vocational education program."

I am advised that the State plan for vocational education for Florida for the five year period beginning July 1, 1937, and continuing to June 30, 1942, has been approved by the Federal authorities and such plan provides that the Executive Officer would receive \$1,500 per year as salary from the State Board for vocational education as reimbursement for that portion of his time which he devotes to the general administration of the vocational education program.

I am advised also that this compensation is to be paid from the George-Deen Federal Fund allocated to vocational education and that the plan or set-up contains the provision that it will be paid from the Federal Fund.

I have carefully considered all constitutional and statutory provisions related to the matter and I find that Section 15 of Article XVI of the Constitution of Florida provides as follows:

"No person holding or exercising the functions of any office under any foreign government, under the government of the United States, or under any other state, shall hold any office of honor or profit under the government of this state; and no person shall hold or perform the functions of, more than one office under the government of this state at the same time.

* * *

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As the State Superintendent, acting as the Executive Officer for the administration of this Vocational Act, would not be holding or exercising the functions of any office under the Government of the United States and would not be holding more than one office under the Government of this State, this Section, in my opinion, would have no application.

The next Section which probably should be considered is Section 11 of Article XVI of our State Constitution, reading as follows:

"No extra compensation shall be made to any officer, agent, employee, or contractor after the services shall have been rendered, or the contract made; nor shall any money be appropriated or paid on any claim, the subject matter of which shall not have been provided for by pre-existing laws, unless such compensation or claim be allowed by bill passed by two-thirds of the members elected to each house of the Legislature."

Apparently this Section was intended for the sole purpose of protecting the State against any unknown claims that might be made against its treasury by any of the enumerated persons. It was not intended to apply to extra compensation, however, or whenever paid, when it comes from some source not derived from State funds. I, therefore, do not think this Section would prohibit the payment of such compensation.

Section 7486, Compiled General Laws of Florida, 1927, provides as follows:

"It shall be unlawful for any officer, State, county or municipal, or any public appointee, or any deputy of any such officer or appointee, to exact or accept any reward, compensation, or other remuneration other than those provided by law, from any *person* whatsoever for the *performance*, non-performance or violation of any law, rule or regulation that may be incumbent upon the said officer or appointee to administer, respect, perform, execute or to have executed; Provided, that nothing herein shall be construed so as to preclude a sheriff or his deputies, city marshal or policeman from accepting rewards or remuneration for services performed in apprehending any criminal." (Italics supplied.)

The Supreme Court held in the case of Johnson, Sheriff, vs. State ex rel. Fox, 127 Southern 317, 99 Fla. 711, that this section of the statute must be read in connection with Section 7487, Compiled General Laws, 1927:

"Penalty for violation of preceding section.—Whoever violates the preceding section without *reasonable* ground for be-

STATE OFFICERS—MISCELLANEOUS

lieving the reward, compensation or remuneration exacted or accepted was authorized by law, shall be punished by imprisonment in the State prison * * *."

Although it might seem that this Section was designed to prevent any of the officers or public appointees of the State from accepting any remuneration other than that provided by law for the performance of any duty, still it apparently means and I believe the Section is limited to compensation or remuneration from "any person" and that the word "any person" does not include the United States Government, as this Section was primarily designed to prevent bribery and was not intended to prohibit the acceptance of compensation from the United States Government for work performed in its behalf or under its supervision. I think the legislative intent along that same line might be reflected by Section 2027, Compiled General Laws of Florida, 1927, reading as follows:

"Salaried employees not entitled to additional pay.—Officers and enlisted men of the militia employed by the State, who receive monthly salaries from the State for military duties, shall not be entitled to any other pay from the State for military service of any character; Provided, that the provisions of this section shall not prohibit any officer or enlisted man from receiving pay *from the United States* for participation in maneuvers, camps, field service or other service of duty." (Italics supplied.)

The Legislature apparently recognized that under certain circumstances the United States will compensate certain persons for services to it and that such remuneration can lawfully be received by State Officers.

The only remaining provisions of the Constitution that might be applicable is Section 4, of Article IX, reading as follows:

"No money shall be drawn from the Treasury except in pursuance of appropriations made by law."

The Legislature apparently realized that there might be a situation whereby Federal funds would come into the State Treasury and could not be expended or drawn from the Treasury because of no direct appropriation as it provided in Section 6 of Chapter 17,707, Laws of Florida, Acts of 1937, as follows:

"Federal money appropriated by the Congress of the United States to be used for State purposes, whether by itself or in *conjunction with* moneys appropriated by the Legislature of the State, is hereby reappropriated as far as it may be necessary to the *purpose for which same was made available* and insofar as the same is permitted by the Federal statutes." (Italics supplied.)

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I am, therefore, of the opinion that there is no law constitutional or statutory that prohibits payment of such compensation from Federal funds to the State Superintendent, but I believe the same to be fully authorized by Section 6 of Chapter 17,707, Laws of Florida, Acts of 1937.

June 8, 1937.

GARNISHMENT AGAINST

Dear Sir:

I am in receipt of your letter of the 24th ult., making inquiry if there is any statute exempting state officers or employees from garnishment.

In reply, I beg to say that I do not know of any particular statute on this subject, but the rule of the common law and the court decisions is that the State of Florida, by virtue of its sovereignty, is not subject to be served with a writ of garnishment. For citations in connection herewith, I refer you to 12 Ruling Case Law 841, Garnishment 80; Article 3, Section 22, of the State Constitution; Michigan Lumber Company vs. Duval County, 45 Florida 472, 34 Southern Reporter 245; Duval County vs. Charleston Lumber Company, 45 Florida 256, 33 Southern Reporter 531.

November 10, 1937.

MEMBER OF STATE SENATE UNDER ART. XVI, SEC. 15, STATE
CONSTITUTION CANNOT HOLD OFFICE AS COMMISSIONER
OVERSEAS ROAD AND TOLL BRIDGE DISTRICT—
CHAP. 16,598, SPECIAL ACTS OF 1933

Dear Sir:

I have your verbal request to be advised as to whether a State Senator may be appointed a member of the Board of Commissioners of Overseas Road and Toll Bridge District created by Chapter 16,598, Special Acts of 1933, and continue in his legislative capacity.

Article XVI, Section 15 of the State Constitution, provides that no person shall hold or perform the functions of more than one office under the Government of this State at the same time.

Chapter 16,598, Special Acts of 1933, creating the Overseas Road and Toll Bridge District, provides for the appointment by the Governor of five members to constitute the Board of Commissioners of such district, whose terms of office by Section 1 of said Act are fixed at four years. The Act provides for the Governor to appoint a subsequent group of Board members for like terms of four years, and also provides that all

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vacancies shall be filled by appointment of the Governor for unexpired terms. Section 25 of said Act prescribes the salary of such commissioners. Section 3 of said Act requires such commissioners to take the cash prescribed for other State Officials by Article XVI, Section 2 of the State Constitution. The Act gives the Board of Commissioners large powers, among which is the exercise of eminent domain provided for in Section 22 of the Act. It follows that such Commissioners are officers and not employees.

In my opinion a State Senator or other member of the State Legislature could not properly hold his legislative position and at the same time hold and perform the functions of a member of the Board of Commissioners of Overseas Road and Toll Bridge District created by said Chapter 16,958, Special Acts of 1933.

July 21, 1937.

PENSIONS—CHAPTER 18045—APPLICABILITY TO ALL STATE OFFICERS AND EMPLOYEES

Dear Sir:

Replying to your letter of the 20th instant inquiring as to the applicability of this Act upon the death of school teachers and officers and employees of the State receiving pensions, it is my opinion that the Act is broad enough to and does apply upon the death of every person receiving at the time of death a State pension.

February 8, 1938.

SALARY—WHAT CONSTITUTES AND WHEN PAYABLE TO BENEFICIARIES UNDER CHAPTER 17274 OF 1935

Dear Sir:

I am in receipt of your letter of the 7th instant with reference to one of the Professors at the University of Florida, who is now 73 years old and is contemplating retirement on one-half the amount of his salary under the provisions of Chapter 17274, Laws of Florida, Acts of 1935. You state that he draws a salary of \$5,000.00 a year payable in nine equal monthly installments. In his letter to you attached to your letter he states that he usually teaches in the summer sessions for which he receives extra pay.

In reply to your inquiry I beg to say that in my opinion the total amount received from the State during the year immediately preceding the date of retirement represents the annual salary of a State Officer or employee contemplated by said Chapter 17274, Laws of Florida, Acts of 1935, and payments to beneficiaries thereunder should be made monthly on the basis of one-twelfth of such total annual salary.

SECTION 36

STATE RACING COMMISSION

July 29, 1937.

RACING—COMMISSION AUTHORIZED TO FIX DATES AND DAYS
—PAR. 1, SEC. 2, CHAP. 14832, ACTS 1931

Dear Sir:

I am in receipt of your letter of the 13th inst., in which you state that Mr. Joseph R. Stein, Chairman of the State Racing Commission, has asked your opinion upon Subdivision 1 of Section 2, Chapter 14832, Acts of 1931, as amended by Chapter 17276, Acts of 1935, which reads as follows:

"(1) To fix and set the dates for racing in any county where there are one or more horse tracks or one or more dog tracks seeking to race and holding ratified permits upon which any track can operate in any county apportioning such dates to the several tracks in such counties in a fair and impartial manner: Provided, however, that where only one licensed dog track is located in a county, such track shall be entitled to operate ninety days, during the racing season at option of said dog track." Mr. Stein's inquiry, as quoted by you, is as follows:

"Section 2, sub-section 1 sets forth that where only one licensed dog track is located in a county such track shall be entitled to operate ninety days during racing season at the option of said dog track. The opinion I want is, suppose there is only one dog track, would the commission have the authority to set dates and days dog can operate."

In reply, your attention is called to the case of *State ex rel. Broward County Kennel Club, Inc., vs. Rose, et al.*, 126 Fla. 156, 170 So. 710, where the Court was considering the situation in a county where there was only one race track consisting of a dog track. The decision in that case was that the race track in such situation is entitled to a racing season of ninety days but the dates between which it will operate are to be fixed by the Racing Commission.

As to whether the Racing Commission may fix the number of days of racing for the one horse track and for the one dog track operating in a single county, I call your attention to the following language of the Supreme Court in the above mentioned case in counties where more than one track is licensed to operate:

"The racing season prescribed by the statute consists of both *dates* and *days*. In counties where more than one track is licensed to operate, the state racing commission has statutory authority to prescribe both *dates* and *days* of racing to be allowed the several tracks, subject only to the requirement

STATE RACING COMMISSION

that *dates* and *days* shall be apportioned on a fair and impartial basis. State ex rel. West Flagler Amusement Co. vs. Rose, et al., 122 Fla. 227, 165 So. 60."

You will also note that the first part of the above quoted statute authorizes the Commission to set the dates for racing in any county where there are *one* or more horse tracks or *one* or more dog tracks. Such language indicates to me that the purpose of the Legislature was to authorize the Commission to control dates and days of races in counties where there are two race tracks, regardless of whether both such tracks shall be horse tracks or dog tracks or consist of one horse track and one dog track. The proviso at the end of said quoted paragraph that where only one licensed dog track is located in the county, such track shall be entitled to operate ninety days, when considered with the first part of the said paragraph, in my opinion means the county in which there is no race track of any kind other than the one dog track.

It is therefore my opinion that in a county having race tracks consisting of one horse track and one dog track, the Racing Commission would be authorized to fix both the dates and days of operation for each of such tracks.

September 9, 1937.

RACING—FIXING DAYS AND DATES IN COUNTY HAVING ONLY
ONE HORSE TRACK AND NO DOG TRACK

Dear Sir:

I am in receipt of a communication under date of the 7th instant asking the following question:

"Has the Commission authority, in a county where there is but one horse-track and no dog-track, to set days and dates for horse-racing in said county?"

In reply I beg to say in my opinion your inquiry should be answered in the affirmative.

SECTION 37

STATE ROAD DEPARTMENT

March 2, 1938.

AUTOMOBILES AND TRUCKS—BUDGET COMMISSION HAS NO
AUTHORITY TO MAKE RULING IN RE-PURCHASING*Dear Sir:*

Apparently there has been some misunderstanding by the State Road Department as to the authority of the State Budget Commission and its order pertaining to the purchase of automobiles, trucks, etc., by the State Departments and Agencies.

The State Road Department has conferred with the Governor and he has requested me to advise you in the premises. The State Road Department, under the law, has a right to fix its own budget and the State Budget Commission is not undertaking to and it would have no authority, in my opinion, to make any ruling with reference to the purchase of automobiles, trucks, etc., by the State Road Department.

February 24, 1938.

BRIDGES—COMPTROLLER AUTHORIZED TO ISSUE WARRANT—
SECTION 5, CHAPTER 18512, ACTS 1937*Dear Sir:*

In your letter of the 19th instant you refer to Chapter 18512, Special Acts of 1937, as making provision for the construction of an additional bridge across the St. Johns River at Jacksonville, and state that the Board of County Commissioners has now turned over to the State Road Department \$246,147.93, which has been deposited in the State Treasury.

You also refer to that part of Section 146 of the Compiled General Laws of 1927, as follows: "And no warrant shall ever be issued until the same has been authorized by act or resolution of the Legislature," and request my opinion as to whether Chapter 18512, Special Acts of 1937, gives the Comptroller authority to issue warrants for duly approved vouchers of the State Road Department against this fund.

In my opinion, Section 5 of Chapter 18512, Special Acts of 1937, is sufficient authority for the issuance of a warrant or warrants for the disbursement of such funds for the purpose of executing the contract between the Board of County Commissioners of Duval County and the State Road Department, as authorized in said Section 5 of Chapter 18512.

STATE ROAD DEPARTMENT

July 8, 1938

BRIDGES—AUTHORIZED TO LEASE CHOCTAWHATCHEE BAY
BRIDGE, CHAPTER 18976, ACTS OF 1937 PLEDGING
SECOND GAS TAX NOT AUTHORIZED*Dear Sir:*

I acknowledge receipt of your letter of July 8, in which you request my opinion as to the authority of the State Road Department to lease for a period not exceeding twenty years the Choctawhatchee Bay Bridge, which is in the process of being constructed on State Road No. 152, at a rental of \$15,000 per year for part of the term and for \$35,000 per year for the balance of the rental period. You state in the request that until Walton County has been paid back the amount expended by the said County for the building of roads within the County pursuant to Chapter 15659, Acts of 1931, the said County will supplement the \$15,000 rental with sufficient of its surplus gas funds remitted to it pursuant to Chapter 14486, Acts of 1929, to make up the difference between the amount of rental and the amount necessary for the Walton County Bridge Authority to pay its bonds, pursuant to Section 7 of Chapter 18975, Acts of 1937, which authorizes the lease of the bridge in question. This explains the difference between the \$15,000 rental for the first of the rental period and the \$35,000 rental to be paid after the County has been paid back in full the amount due it under the provisions of Chapter 15659, Acts of 1931. The Lease Resolution which is attached to the request for an opinion, Paragraph 2, provides for the definite yearly rental of \$35,000, for a period not exceeding twenty years from the completion of the bridge. This sum to be used from the Second Gas Funds which were paid into the State Road License Fund for use upon preferential state roads in Walton County. The lease further provides that after the obligations incurred in the construction of the bridge have been paid off that the bridge will become the property of the State of Florida free of tolls and under the complete control and operation of the State Road Department. There is a further provision in the lease that should the State Legislature change the present allocation of the Gas Tax or divert this to other purposes, that the State Road Department is not bound to continue the lease in question unless other revenue sources are made available to the Department to be used solely for state road purposes in Walton County.

Chapter 18975, Laws of Florida, Acts of 1937, creates the Walton County Bridge Authority. Section 7 of the Act is as follows:

"Authority is hereby granted to the State Road Department of Florida to lease from the Authority the project for a period of twenty years, provided that the Authority shall not make any such lease unless the terms thereof provide for maintenance and operation and payment of an annual rental sufficient to provide

STATE ROAD DEPARTMENT

for the payment of interest upon all bonds issued by the Authority, and to create a sinking fund for the retirement thereof at or before maturity."

It is my opinion that the Authority for the lease in question must be found in Chapter 18976, Laws of Florida, Acts of 1937. I think under this Act that the Road Department has the authority to lease the bridge in question but I do not find any authority for pledging the Second Gas Tax that accrues to the Road Department after Walton County has been paid back the amount due it originally expended for roads, to be used by the State Road Department for construction within the County of First, Second or Third Preferential Systems of State Roads by the State Road Department. There is nothing in the title of the Act itself nor in the Act to indicate an intent on the part of the Legislature to amend Subsection c of Section 8 of Chapter 15659, Laws of Florida, Acts of 1931.

I further do not find any provision in the Act permitting the Authority to deed or turn over to the State Road Department after the bonds in question have been paid the bridge.

June 30, 1938.

BRIDGES—CHAPTER 15659, LAWS OF FLORIDA, ACTS OF 1931—
AUTHORITY OF STATE ROAD DEPARTMENT TO DEFER
PART OF THE SECOND GAS TAX

Dear Sirs:

I acknowledge receipt of your letter of June 29, 1938, in which you state:

"The Walton County Bridge Authority proposes to construct a bridge across Choctawhatchee Bay as a part of State Road 152, which forms a link in the State Preferential Road System. It proposes to finance the construction of this bridge in the following manner:

"(a) By an outright grant from the Public Works Administration of the Federal Government of 45% of the cost of the bridge;

"(b) By using the proceeds received by the Authority from the Public Works Administration in exchange for the Authority's twenty year self-amortizing bonds representing 55% of the cost of the construction of said bridge.

"Said Authority has made the following request of the Department:

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"(1) That the Department lease said bridge from the Authority when constructed at an annual rental of \$15,000 derived from the proceeds of the First Gas Tax, which may be termed the general funds of the Department, pursuant to authority of Section 7, Chapter 18976, Laws of Florida, Acts of 1937. Such rental shall be used to pay interest on said bonds, and also upon account of the principal thereof.

"(2) That the Department agree to allocate to said Authority, beginning in 1942 and continuing annually thereafter, such an amount of the proceeds of the Second Gas Tax allocable to Walton County as will suffice to complete the Amortization of said Authority's bond issue at its maturity.

"The Department is satisfied of its authority to lease said bridge, and your attention need not be concerned on that point."

My opinion is therefore requested upon the legality of the allocation by the State Road Department of the proceeds of the Second Gas Tax allocated to Walton County after 1942, for the purpose of paying the bonds of the Walton County Bridge Authority.

The Supreme Court of Florida, in the case of *State ex rel. Harrell, et al., vs. Cone*, 177 So. 854, split three-three on the legality of Chapter 17967, which authorized the State Board of Administration to distribute and pay monthly to the County Road and Bridge Fund of Washington County all monies appropriated to the use of the State Road Department for the construction within the said County of those State roads which were heretofore designated as being a part of the First, Second or Third Preferential System of State Roads.

One of the questions involved in that case was the right of the Legislature to authorize the diversion of the Second Gas Tax to the counties for the building of roads by the County Commissioners within the county in question. This particular act required the Board of Administration to send the money to the County Road and Bridge Fund of the county to be used by it for road construction. It was contended that such a diversion was for the sole purpose of constructing and maintaining local county roads and bridges, contrary to the spirit and purpose of Chapter 15659, Acts of 1931, which imposed the Second Gas Tax.

In a dissenting opinion written by Mr. Justice Buford, which was concurred in by Chief Justice Ellis and Mr. Justice Brown, it was said that the Act created an unlawful discrimination as to the participation by Washington County in a fund produced by State taxation for the benefit of the State as a whole.

The effect of this split decision by the Supreme Court was to leave to the Circuit Judge the right to say whether or not acts of this kind

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are valid. Most of these cases have come before Judge Johnson of the Second Judicial Circuit in Tallahassee and he has uniformly followed the decision written by Mr. Justice Buford and concurred in by the Chief Justice and Mr. Justice Brown.

It will be observed from the letter sent me that Walton County will have had its preferential road system completed by 1942, at which time it is proposed that the funds then accruing to the County be allocated for the amortization of the said Walton County Bridge Authority's bonds. I direct your attention to Subsection (c) of Section 8 of Chapter 15659, Acts of 1931, which provides as follows:

"(c) Whenever the amount furnished, advanced, paid out, contributed or expended by any county and/or special road and bridge district or other special taxing district of such county, directly, or through the Department, in the construction or building of such state roads, within such county, has been returned to such county, such county shall continue to participate in the distribution of the three (3c) cents of the Second Gas Tax as provided in Section 8 (b) hereof, so that thereafter a sum equal to the sum provided to be returned to or for such county under this Act shall be monthly paid into the State Road License Fund, and same is hereby monthly appropriated to the use of the Department for the construction within said county of those State Roads within such county which were at the time of the passage of this act designated as and recognized by the Department as being a part of the first, second or third preferential system of state roads, and which roads, to the extent of such funds, are to be constructed and built in such counties, respectively, by the Department as soon as practicable as state projects and undertakings.

"Such funds shall be applied and used by the Department for such purpose and not otherwise, and the expense of constructing said roads is hereby declared to be a legitimate proper state expense to be incurred for a general and state purpose.

"When any county in the State of Florida no longer participates under the provisions of this Act in the return to or for it of monies contributed for the construction of state roads, as herein provided, and when these roads shall have been constructed which are at the time of the passage of this Act a part of the first, second and third preferential system of state roads within such county, then and thereafter all funds thereafter derived from the Second Gas Tax theretofore allotted or appropriated to or for said county shall be transferred to the State Road License Fund of the State of Florida in the manner and to be expended as provided by law."

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Regardless of the great benefit to accrue to Walton County through an authorization by the Road Department of the use of the Gas Tax in question, I do not see how the State Department would have such authority.

When the Supreme Court of the State has split evenly on the authority of the Legislature itself to divert this fund, I do not see how an administrative department would have authority so to do.

It is therefore my opinion that the State Road Department would not have authority to pledge the proceeds of the Second Gas Tax allocable to Walton County after 1942 to the Walton County Bridge Authority for the payment of the bonds in question.

April 6, 1937.

BRIDGES—JURISDICTION OF THE ROAD DEPARTMENT OVER
TOLLS CHARGED ON GANDY BRIDGE AND PURCHASE
OF SAID BRIDGE

Dear Sir:

I acknowledge receipt of the following letter, signed by W. M. Miles, Secretary State Road Department, forwarded to me by the Honorable W. B. Cone, Secretary to the Governor.

"Will you please have the Attorney General's Office make a report on the jurisdiction of the State Road Department insofar as Gandy Bridge, located in Pinellas and Hillsborough Counties, is concerned. We wish to know if we have any jurisdiction over the tolls and whether or not such Bridge can be acquired by the State Road Department."

Section 2744, Compiled General Laws, 1927, authorizes the State Railroad Commission to fix and regulate the tolls, charges, use and hours of any toll bridge or causeway which is more than four miles in length now constructed or built or may be hereafter built over any river, bay, bayou, or other body of water in the State of Florida.

The Railroad Commission of the State of Florida, acting under authority of this section, has heretofore and is at the present time regulating tolls to be charged over Gandy Bridge.

Chapter 15024, Acts of 1931, and Chapter 17277, Acts of 1935, contain provisions authorizing the State Road Department to grant franchises for the construction and operation of toll bridges, as well as to regulate tolls charged on the said bridges. Section 8 of the Act (Section 1656(8), Compiled General Laws of Florida, Permanent Supplement No. 2) provides as follows:

"Provided that nothing in the foregoing sections shall affect any franchises heretofore granted by the Legislature or by any

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state or county agency for toll bridges or roads that have been accepted, nor the jurisdiction of the governmental body regulating, governing, and controlling the operation of the same, but the owner or owners of such franchise of any such toll bridge or road shall have the option of entering into contracts with the State Road Department under the provisions of this law;"

From the above quoted section, you will note that the Act authorizing the jurisdiction of the Road Department over toll bridges, etc., specifically excepted those bridges where franchises had theretofore been granted by the Legislature or any state or county agency.

Chapter 7601, Laws of Florida, 1917, and acts amendatory thereof, authorized the construction of Gandy Bridge by any corporation organized for that purpose upon certain conditions. This Act, in Section 5, provides as follows:

"That any such corporation constructing such bridge over the waters of Tampa Bay or Old Tampa Bay is hereby granted the right of way along or over any of the waters and submerged land or lands adjacent to Tampa Bay or Old Tampa Bay owned by the State of Florida * * * and own, occupy and use for its corporate purposes all lands made by filling in the submerged lands on its line of road, bridge, trestle and approaches thereto over and through the said waters."

This bridge was built by the Tampa and St. Petersburg Railway Company, a corporation chartered by the State of Florida. Later the name of this company was changed to the Tampa and St. Petersburg Bridge Company. Under Section 1656(1)-Section 1656(8), inclusive, the State Road Department has authority to purchase or lease toll bridges which are built under authority of said Act or to buy or lease other toll bridges, but you will observe that under Section 1656(8), quoted above, any franchise heretofore granted is not affected by this Act.

The Supreme Court of Florida, in the case of Day vs. City of St. Augustine, 139 So. 880, discusses at length the right of the Legislature to authorize the building of toll bridges. In that case the Court said:

"It is settled law that the privilege of establishing a bridge over a navigable river and taking tolls for the use of the same is a franchise the existence and disposal of which is under the legislative department of the State, and that such franchise cannot be assumed or exercised without legislative authority. The grant of a franchise when made binds the public and is directly or indirectly the act of the State."

Again the Court said:

"Authority to fix and regulate the tolls for traffic on toll bridges constructed or built over or across the Matanzas River

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seems to be conferred upon the Railroad Commission by Section 2748, Compiled General Laws, 1927."

It is my opinion, therefore, that the State Road Department has no jurisdiction over the tolls charged for traversing Gandy Bridge, nor can the bridge be acquired by the State Road Department unless by and with the consent of the owners of the said bridge.

August 12, 1937.

BRIDGES—RENTAL PAYMENTS DEDUCTED FROM SECOND
GAS TAX

Dear Sir:

In your letter of the 15th instant, you refer to Chapter 15659, Laws of Florida, Acts of 1931, the gasoline tax allocation act, and also to Chapters 15024, Acts of 1931, 16234, Acts of 1933, and 17277, Acts of 1935, authorizing the State Road Department to lease or purchase toll bridges.

You state that a county has constructed a bridge which it is authorized to operate as a toll bridge, and that your Department desires to lease the same and operate it free of tolls. It is also stated that the cost of construction of this bridge has been included in the audit required by Section 8 of Chapter 15659, of the contribution by the county which is to be reimbursed from the "Second Gas Tax."

You thereupon request my opinion as to whether the rental payments made by your Department may be deducted from the amount to be reimbursed to the county from the "Second Gas Tax," and whether this may be enforced by incorporation in the lease entered into by your Department with the county to the end that the gas tax does not pay twice for the same structure, namely, through the distribution fund and the rental payments.

It is my opinion that the Legislature by the creation of the "Second Gas Tax" and providing for reimbursement to the counties for their expenditures in the construction of highways which were at the time of the enactment of Chapter 15659 designated State roads, intended to reimburse the counties only to the extent of their contribution in such amount or amounts as determined in the manner provided in Section 8 of Chapter 15659, and that it was never intended either by Chapter 15659 or by any Act under which the State Road Department is authorized to lease or rent bridges, to pay twice for the construction of a bridge which forms a part of a highway designated as a State road.

It seems to me, therefore, that there is no legal objection to writing into the contract or lease for the rental of such bridge a provision that

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the rental payments made by the State Road Department shall be deducted from the amount to be reimbursed to the county from the "Second Gas Tax."

July 18, 1938.

**BRIDGES—AUTHORITY TO LEASE—CHAPTER 15024 AS AMENDED
BY CHAPTER 17277, ACTS 1935**

Dear Sirs:

Your letter of July 1, 1938, advises that the City of St. Augustine owns a bridge across the Matanzas River, which is not subject to any lien created by bonded or mortgage indebtedness; that the bridge was operated as a toll bridge until 1931, when the State Road Department leased it for one year; that the State Road Department has continued to make annual leases during each year thereafter; and that the bridge is a connecting link in the State Highway System.

You ask to be advised as to the legality of an agreement wherein the State Road Department agrees to lease the bridge from the City for one year only, and to pay a fixed rental, and the City agrees to lease the bridge to the State Road Department for that year, and no longer, and further agrees that if subsequent annual leases are entered into, resulting in the payment of a fixed sum of total rent, that thereupon the City will convey the bridge to the State Road Department in fee simple.

The charter of the City of St. Augustine, as amended by Chapter 18873, Laws of Florida, Special Acts of 1937, authorizes it to lease, sell, donate, or otherwise dispose of, its property.

Chapter 15024, Laws of Florida, Acts of 1931, as amended by Chapter 17277, Laws of Florida, Acts of 1935, authorizes the State Road Department to lease annually any toll bridges connecting any State highway, and to use, for such purpose, up to 25 per cent of the funds allocated to the District by the budget of the State Road Department; also to purchase and acquire any toll bridge constructed under the laws of Florida, and to use, for such purpose, the funds allocated to the District by any State Road Department budget.

In the case of *Day vs. City of St. Augustine*, 139 So. 880, the Supreme Court of Florida upheld the right of the City to charge tolls for the use of this bridge.

I am of the opinion that the City and the State Road Department are authorized to enter into a lease such as you have outlined. Since the State Road Department is not obligated to do more than lease the bridge for one year at a fixed rental, Section 6 of Article IX of the Constitution, is not involved.

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December 31, 1937.

CONVICTS—DISCHARGE ALLOWANCES—PAYMENT OF TRANSPORTATION EXPENSES AND REWARDS FOR CAPTURE AND RETURN OF PRISONERS—SECTIONS 8588, 8590, AND 8619, C.G.L.

Dear Sir:

I am in receipt of your letter of the 16th instant containing three questions relative to the above captioned matter, which questions will be recited and answered in consecutive order:

"Question 1: Is this Department legally obligated to furnish from its funds, any wearing apparel or money to a State convict upon his discharge, if prior thereto he had been employed by the Department as a member of the State Convict Road Force?"

Answer: Section 8590, Compiled General Laws of Florida, 1927, with reference to State Prisoners, provides for certain clothing and allowances to certain prisoners when discharged.

Section 8619, Compiled General Laws of Florida, 1927, relating to the State Convict Road Force, provides that the laws and regulations as now in force affecting the escape and discharge of prisoners shall apply to all prisoners used in the State Convict Road Force as provided in this law.

I am advised that it has been the custom for such clothing and allowance payments to be made to prisoners in the State Convict Road Force upon discharge by the State Road Department, and I assume that such custom is based upon an original departmental ruling. Such ruling and payment by the State Road Department would also seem reasonable and proper by virtue of the fact that such Department is receiving the services of such prisoners.

In view of the provisions of Section 8619, together with the custom and the apparent departmental ruling to make such payments and in consideration of the reasonableness and propriety of such payments, it is my opinion that the State Road Department is authorized to make payments from its funds for such purposes.

"Question 2: Has this Department legal authority to incur and pay from its funds, the expense of its transportation from other States back to Florida, of a Florida State convict who escaped while employed on the State Convict Road Force?"

Answer: Section 8568, Compiled General Laws of Florida, 1927, contemplates when prisoners escape search shall be made and the prisoner shall be returned if apprehended to serve out his time.

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In view of such Section and the provisions of Section 8619, above quoted, and in view of the custom of the State Road Department to pay the transportation from other states of escaped State Convicts used by said Department, it is my opinion such transportation charges may properly be paid by the State Road Department.

"Question 3: Has this Department legal authority to pay a reward to any person for the capture (or for information leading thereto) of a State convict who escaped while employed by this Department on the State Convict Road Force?"

Answer: There appears to be no specific law on the subject of rewards being paid generally or by the State Road Department for the purpose of arresting or securing information for the arrest of escaped convicts. However, I am advised that it has been the custom of the State Road Department to pay reasonable amounts for such purposes.

In this connection, your attention is called to the last paragraph of a letter by former Attorney General Fred H. Davis, late Justice of the Supreme Court of Florida, appearing in the Biennial Report of the Attorney General for 1929-1930 on page 349, which reads as follows:

"With regard to rewards, I am of the opinion that a sheriff has the legal right to offer a reward payable from the earnings of his office for the capture of criminals or otherwise, in connection with his official duties. It is a well known fact that officers frequently are compelled to offer rewards in order to secure the cooperation of other officials throughout the country in apprehending prisoners in special cases. The offering and payment of such rewards is in my opinion as much a proper expense of the operation of a sheriff's office as any other."

In view of the above mentioned established custom of the State Road Department and the reasoning embraced in the above quotation from the opinion of former Attorney General Fred H. Davis, it is my opinion that the State Road Department has legal authority to pay a reasonable reward for the capture or for information leading to the capture of a State Convict who escaped while employed by the State Road Department on said State Convict Road Force.

December 4, 1937.

**DAMAGES—PERSONAL AND PROPERTY INJURIES, CLAIMS FOR
NOT AUTHORIZED UNLESS BY SPECIAL LEGISLATION**

Dear Sir:

I acknowledge receipt of your letter of the 3rd instant, requesting my opinion as to the legal authority of the State Road Department to

STATE ROAD DEPARTMENT

pay claims for damages for personal and property injuries to persons other than employees of the Department.

The State is immune from suit, except that provision may be made by general law for bringing suit against the State as to all liabilities. Section 22, Article III of the Constitution of Florida.

The State Road Department is a component part of the State Government, and a suit against such Department is in effect a suit against the State. *State ex rel Davis, Attorney General, vs. Love*, 126 So. 374.

The Legislature has by the enactment of Chapter 15022, Laws of Florida, Acts of 1931, made provision for and consented that suits at law and in equity may be brought and maintained against the State Road Department on claims under contract for work done, but consent has not been given by general law for the bringing of suit against the Department on claims sounding in tort.

The State Road Department is not liable in tort for damages. *Arundel Corporation et al vs. Griffin et al*, 103 So. 422.

There is no provision in law authorizing the State Road Department to pay claims for damage for personal or property injuries to persons other than employees of the Department, and the only way such claims could be legally paid would be by a bill passed by two-thirds of the members elected to each house of the Legislature. Section 11, Article XVI of the Constitution of Florida.

September 25, 1937.

GROUP LIFE INSURANCE FOR EMPLOYEES ON VOLUNTARY BASIS

Dear Sir:

This is in reply to your letter of September 24th concerning the proposed arrangement for group life insurance on those employees of the Road Department who voluntarily elect to take same. You state that the plan contemplates that monthly payments for said insurance would be deducted from the salary or wages of the individual employee.

Under date of November 9, 1936 the Attorney General rendered an opinion to the effect that the Board of Control has the legal authority to put in force group insurance affecting the employees of various State institutions. The proposed plan in that instance was to incorporate in the contracts of employees provisions to the effect that the compensation is a certain stated salary plus paid up group life insurance for one year in a stated amount. This opinion is reported at page 511 of the Biennial Report of the Attorney General for the years 1935-36. Substantially the same plan was approved by the late Honorable Fred H. Davis while Attorney General insofar as employees of a school board were concerned.

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The essential distinction between the plans previously approved and the proposed plan under consideration is that this plan is wholly voluntary. It would necessarily result in expense to the State in defraying the cost of additional bookkeeping and setting up the machinery for putting the plan in operation. In view of the fact that the plan is voluntary it would not be substantially different from any private contracts of insurance that may be entered into by the individual employees of the State Road Department. It would therefore follow that the additional expense incurred would be for the benefit of those private individuals who elect to take such insurance and such expense would therefore be illegal.

This opinion is based entirely upon the illegality of such expenditures for the benefit of private individuals and does not purport to include any plan which might have been worked out along the lines of that adopted by the Board of Control and referred to in the opinion of the Attorney General dated November 9, 1936.

July 23, 1937.

LICENSE FUND—PAYMENT OF MONIES TO BOARD COUNTY COM-
MISSIONERS IN COMPLIANCE WITH PROVISIONS OF
CHAPTER 17053, ACTS OF 1935

Dear Sirs:

This is in reply to your letter of July 16th. You state that you have until recently issued vouchers from time to time under the provisions of Chapter 17053 for the payment of monies in the State Road Department License Fund to the Board of County Commissioners of Jackson County.

You request my opinion as to whether or not you should continue issuing your vouchers in the manner provided by said Act, or if you would be justified in refusing to issue such vouchers on the theory that said Act is invalid; or on the further theory that payments of said monies cannot be classed as expenditures of the Road Department under Chapter 17281, Acts of 1935, for the reason that the monies in question are not used or expended by the Department to construct in Jackson County any of the three preferential roads mentioned in Sections 8 and 9 of Chapter 15659, Acts of 1931.

While there is considerable room for doubt concerning the constitutional validity of Chapter 17053, it is my opinion that your Department is protected in complying therewith until it is declared to be invalid by a court of competent jurisdiction. Granting that you, as an administrative agency of the State, have the right to challenge the constitutional validity of this Act, this would be strictly a matter of departmental policy beyond the proper scope of any opinion I might render.

STATE ROAD DEPARTMENT

November 22, 1937.

MOTOR VEHICLES—INTERPRETATION OF PARAGRAPH 9 OF
CHAPTER 16085, ACTS OF 1933*Dear Sir:*

This will acknowledge receipt of your letter of recent date * * * asking for an interpretation of certain clauses in Chapter 16085, Laws of Florida, 1933, and asking if it is necessary to obtain special written permission from the State Road Department in view of the following provisions of Paragraph 9 of said Act:

"Provided further that the provisions of this Act except as to weight fixed herein shall not relate to the transportation of poles, piling, logs, trees, lumber or any article which from its nature is not capable of disjoining or dismantling, or whose fitness for the use to which it is intended would be destroyed by severing, from forest, point of production or growth or point of manufacture or shipment, to point of shipment, treatment, replanting, remanufacture or conversion."

It is my opinion that such special permission is not required, but that written permission is required whenever the class of persons mentioned in said Act is using "hauling equipment" that exceeds the length provided for in said Act when such equipment is being used for "other than poles and wire."

April 3, 1937.

MOTOR VEHICLES—WEIGHT OF LOAD AS AFFECTING SPEED
LIMIT UNDER SECTION 1318, COMPILED GENERAL
LAWS OF FLORIDA, 1927*Dear Sirs:*

This is in reply to your letter of March 29th enclosing letter from * * *

You request my opinion as to whether or not the weight of the load is to be considered as part of the weight of the "vehicles" under Section 1318, Compiled General Laws of Florida, 1927. This section provides that the exceeding by motor vehicles of certain speed limits therein defined shall be deemed prima facie evidence of reckless driving. It is my opinion that this section does not contemplate that the weight of the load shall be taken into consideration for it refers only to the weight of the "vehicles." This view is supported by the fact that other provisions of the law specifically refer to "gross weight" while Section 1318 does not.

STATE ROAD DEPARTMENT

February 24, 1938.

STATE ROADS—SECOND GAS TAX—FIRST, SECOND AND THIRD
PREFERENTIAL SYSTEMS OF STATE ROADS TO PARTICIPATE—
SECTION 8-C, CHAPTER 15659, ACTS 1931*Dear Sir:*

In your letter of the 23rd instant, you ask if in my opinion Section 8-C, Chapter 15659, Acts of 1931, means:

"1. All State roads designated and established as such by the Legislature prior to the passage of said Chapter, falls into any one of the three preferential systems? or,

"2. All State roads so designated by the Legislature of 1923, 1925, and 1927, and not classified in 1st or 2nd preferential systems, automatically fall into the third system?

"3. Only those State roads which were designated as and recognized by this Department as falling in the 1st, 2nd or 3rd preferential systems, become a part of such systems in the absence of specific legislative classification?"

I understand your inquiry to relate to the right of a county to continue to participate in the distribution of the three cents of the second gas tax, after the amount furnished, advanced, paid out, contributed, or expended by such county in the construction or building of State roads within such county has been returned to such county.

The answer to this question depends upon the correct interpretation of the following phrase as used in Section 8-C of Chapter 15659:

"* * * designated as and recognized by the State Road Department as being a part of the first, second, or third preferential system of State roads.* * *"

In the first place, the roads to participate under the provisions of this Act must be State roads, and must have been established by the Legislature if established after June 8, 1923, since the Legislature by the enactment of Chapter 9311, Acts of 1923, took from the Road Department the power to designate and establish State roads.

In the next place, such State roads must have been designated by the Legislature as being in one of the classes known as the first, second or third preferential systems. Or, if not so designated by the Legislature, it must have been prior to the enactment of Chapter 15659 recognized by the State Road Department as being a part of the first, second, or third preferential system of State roads.

If the Legislature gave to any State road a preferential status as to construction, which placed it in a classification known as either the

STATE ROAD DEPARTMENT

first, second, or third preferential system, nothing further was required to so classify the same, and no action by or failure to act on the part of the State Road Department could add to or change the preferential status given to such State road by the Legislature.

On the other hand, if the Legislature had established a State road, but had not given to it a preferential classification or status for construction, and the State Road Department had, after its establishment by the Legislature and prior to the enactment of Chapter 15659, recognized such State road as being a part of either the first, second, or third preferential system of State roads, in my opinion, it was the intention of the Legislature that such road should participate in the Second Gas Tax by being constructed by the Road Department, as provided in Section 8-C of Chapter 15659.

By the enactment of Chapter 9311, Acts of 1923, the Legislature declared, designated, and established a number of State roads, and provided that certain of said roads should be completed before any new contracts were made on any other roads therein provided for.

In 1925, the Legislature by the enactment of Chapter 10269, established other State roads and provided the time when construction on certain of said roads should begin. Thus the Legislature had in effect established two preferential systems of State roads, but had not referred to them as first and second preferential systems. In 1929, however, the Legislature did refer to such classifications as first and second preferential systems, by providing that other State roads established by certain acts of the 1929 Session, should not be deemed or held to make such roads a part of the State's first and second preferential systems.

In 1929 the Legislature by separate Acts established a number of State roads, in some of which it was provided that such roads should not be deemed or held to be a part of the first and second preferential system of highways, and in others nothing was said as to construction, while in still others it was provided that construction should begin when that stage of construction had been reached on the first and second classification for construction, when labor and equipment might be transferred without delay to the construction of such roads under prior classification for construction. This seemed to establish a third preferential system, although it was not so called at that time by the Legislature.

I think the fact that the Legislature in establishing such a large number of State roads prior to and during the Session of 1931, giving to some and withholding from others preferential designation, justifies the conclusion that its intent in the enactment of Chapter 15659 was and is that the only State roads entitled to participate in the Second Gas Tax under the provisions of Section 8-C of said Act are those State roads designated or classified by the Legislature as being a part of the first, second, or third preferential system of State roads, and such other

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State roads as had been recognized by the State Road Department as being a part of the first, second, or third preferential system of State roads.

I am therefore of the opinion that the intent of the Legislature in the enactment of Section 8-C of Chapter 15659 was that when the amount furnished, advanced, paid out, contributed, or expended by any county in the construction or building of State roads therein, has been returned to such county, it shall continue to participate in the distribution of the three cents of the Second Gas Tax only to the extent of the construction by the State Road Department of the State roads therein which had been at the time of the passage of said Act (June 22, 1931) by the Legislature designated as being a part of the first, second, or third preferential system of State roads, and also such State roads as had been by the State Road Department recognized as being a part of the first, second, or third preferential system of State roads, such construction by the State Road Department to be as soon as practicable and as the funds therefor are available under the distribution provided for in Section 8-B of Chapter 15659.

This opinion is, of course, subject to the well recognized rule of construction that departmental construction placed upon a statute soon after its enactment, and recognized over a number of years in the administration thereof, is entitled to great weight in arriving at the intent of such Act.

SECTION 38

STATE TUBERCULOSIS BOARD

December 23, 1933.

BOARD AUTHORIZED TO EXPEND FUNDS FOR REPAIRS, ADDITIONS, REPLACEMENTS, ALTERATIONS, ET CETERA

Dear Sir:

I have your letter of December 21st requesting my opinion as to whether the State Tuberculosis Board has the right to expend funds available received from Patient Income for repairs, additions, replacements and/or alterations necessary at the Tuberculosis Sanatorium. The specific items that you mention that you wish to take care of at this time are a better water supply, a more adequate discharge system for the laundry and your part of the cost of a W. P. A. project for landscaping, planting a citrus grove, additional drive ways, walks, et cetera.

I have examined Chapter 18284, Acts of 1937, which supplements Chapter 12284, Acts of 1927. The only reference to the expenditure of money under the 1937 Act is Section 4 which provides:

"* * * All such monies shall be placed to the credit of the Board. The State Treasurer shall also place to the credit of the Tuberculosis Board the State's proportionate part of the care and maintenance charges incurred in the sanatorium by any indigent or semi-indigent tuberculous legal resident of Florida. All monies placed to the credit of the State Tuberculosis Board shall be placed in a separate fund and shall be disbursed in the manner provided in Section 8, Chapter 12,284, Laws of Florida.* * *"

Therefore, in order to determine how the money received can be expended, it is necessary to refer back to the 1927 Act. This Act provides for the establishment and maintenance of a State Tuberculosis Sanatorium and authorizes the Tuberculosis Board to employ all necessary personnel and gives them the "power to contract and to be contracted with." Section 8 of the Act which was referred to in the above quoted portion of Section 4 of the 1937 Act provides the method of the disbursement of the funds held by the Board and reads:

"* * * No voucher shall be issued or drawn by the State Tuberculosis Board for the payment of any monies for the purchase of real property, except the same be approved by said Board in regular session and countersigned by the Chairman and Secretary thereof; for the erection of a building or buildings except the same be approved by the supervising architect and countersigned by the Chairman; for the operation expenses of the hospital except the same be approved by the Superintendent of the Sanatorium and countersigned by the Chairman of the Board."

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It is clearly apparent from the above quotation that the Legislature contemplated that the operating expenses of the sanatorium would be paid from its income. Of course, if this was not true, the building of the sanatorium would be a useless expenditure of money if it could not be operated, and I can see no difference between the items that you have mentioned that are necessary for the sanatorium to more properly serve its patients than the necessary repairs or replacements of linens, et cetera, actually used in the sanatorium or the repairs or replacements of any other articles necessary for the welfare and convenience of the patients there.

This Act was passed by the Legislature for the purpose of establishing a Tuberculosis Sanatorium in the State of Florida in order that people so afflicted could receive proper attention and treatment in the sanatorium. I am, therefore, of the opinion that any money spent to that end is properly chargeable to operating expenses and that you do have the authority to do the things that you have set forth in your letter to me of December 21st.

December 22, 1938.

**BOARD DOES NOT HAVE AUTHORITY TO USE PART OF ITS
APPROPRIATION FOR THE ESTABLISHMENT OF
AN OUT-PATIENT DEPARTMENT**

Dear Sir:

This will acknowledge receipt of your letter of December 21st with reference to the matter that we discussed several days ago regarding the right of the State Tuberculosis Board to use a part of its appropriation for an out-patient department.

Since that time, I have thoroughly reviewed the Act of the Legislature of 1927 and 1937 in an effort to ascertain whether or not it would be possible to construe the Act so that this department could be established by you as I am in thorough sympathy with same and feel that it probably should be done at the earliest possible moment. However, I am very sorry to inform you that I can find no authority either expressed or implied in the Act to permit this to be done. On the contrary, it seems to me that it was the intention of the Legislature in making available money for the care and maintenance of tubercular patients that the treatments be provided exclusively in the sanatorium and that there would be no authority to charge this appropriation with the expense of treatments outside of the sanatorium.

All through the Act, we find that the language indicates the Legislature did not contemplate the establishment of an out-patient department. Section 2 of Chapter 18284 of the 1937 Act provides how the patients may be admitted to the sanatorium. Section 3 contains further

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provisions as to the admission to the sanatorium of patients and provides further for the hospital charge for each patient and how it is to be divided between the County and State of Florida. All through this Section, it speaks of hospital charges. Section 4 prescribes the maximum amount to be paid for the care and maintenance of tubercular patients received in said sanatorium and this Section further provides:

"All monies required to be paid by the several counties and/or patients for the care and maintenance of patients in the sanatorium shall be paid to the State Tuberculosis Board.
* * *

You will note that the above quoted provisions of Section 4 specifically says

"* * * for the care and maintenance of patients in the sanatorium.* * *

And no where do I find any authority for a charge to be made either to the county or against the State appropriation for patients who are not actually in the sanatorium receiving treatment there.

January 14, 1938.

COMPTROLLER AUTHORIZED TO TRANSFER FUNDS APPROPRIATED UNDER CHAPTER 12284, ACTS OF 1927, TO REIMBURSE ANOTHER FUND

Dear Sir:

I have your oral request for an opinion as to whether or not it will be proper to transfer out of monies appropriated to the State Tuberculosis Board under Chapter 12284, Acts of the Legislature of 1927, to reimburse another fund held by said Board that was derived from money secured from the Federal Government and was paid out of the latter fund for salaries. You stated further that if such a transfer is made that the money will then be used to pay interest that has accrued on a portion of the money secured by this Board from the Federal Government.

Chapter 12284, Acts of 1927, creating the State Tuberculosis Board provided among other things:

"Section 7. That the sum of \$200,000.00 * * * or so much thereof as may be necessary is hereby appropriated for the establishment, maintenance and support of said institution hereby created and maintained by this Act."

The Act also gave this Board the authority to establish a State Tuberculosis Sanatorium. It was further provided in the Act:

STATE TUBERCULOSIS BOARD

"No voucher shall be issued or drawn by the State Tuberculosis Board for the payment of any monies for the purchase of real property except the same be approved by said Board in regular session and countersigned by the Chairman and secretary thereof, for the erection of a building or buildings except the same be approved by the supervising architect and countersigned by the Chairman; for the operating expenses of the hospital except the same be approved by the superintendent of the sanatorium and countersigned by the Chairman of the Board."

It is, therefore, apparent to me from the above quotations from this Act that this Board was expressly authorized to do everything necessary to establish in the State of Florida a State Tuberculosis Sanatorium and could use for such purpose the entire sum of \$200,000.00. I have been informed further that this Board borrowed a certain amount of money from an Agency of the Federal Government. Their first plan of financing was not approved by the Supreme Court. See 167 So. 826. Their second plan of financing, however, was approved by the Supreme Court. See 189 So. 218. I have been further advised that under the latter plan, that there was set up in the total sum secured from said Federal Agency, the sum of \$14,386.11 to take care of interest, and that out of this sum there has already been paid \$5,386.11 in interest, and that if this sum had not been depleted by expending same for construction purposes, et cetera, that there would be on hand at this time, the sum of \$9,000.00 available for payment of the interest that is now due.

I have also been informed that the Board has secured the approval of an additional loan from the Federal Government of approximately \$100,000.00 and that it is necessary for this Board to secure this money for the purpose of fully completing and equipping this sanatorium, but that this loan can not be consummated until the interest upon the other loan secured from the Federal Government Agency has been paid.

There is no doubt in my mind that such a transfer is proper because under the Act of the Legislature above referred to, if the salary account which the Board now seeks to reimburse by the transfer as above outlined, was expended by the Board in the establishment of this sanatorium, these salaries could have been paid directly out of the monies appropriated by the 1927 Legislature and there would have been no question about same. The fact that it was paid out of another account would not seem to me to preclude the reimbursement of such account.

I think the question resolves itself into a simple matter of bookkeeping and I do not think the fact that after the Federal account has been reimbursed for salaries paid out of same, that just because it will then be used to pay interest upon a Federal loan, would make any difference as I believe that it would be then a question for this Federal Agency to determine, but since as I have said before, money was set up in this

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Federal loan to pay interest with and since if that fund is reimbursed there will still be a balance in the amount originally set up to pay interest, there would be no complaint there.

I am, therefore, of the opinion that if the Board properly authorized you to make such a transfer, that it will be entirely legal for you so to do.

June 22, 1938.

DONATIONS—REMITTANCE TO STATE TREASURER—CHAPTER
12,284, ACTS OF 1927, NOW SECTIONS 3309 TO 3316, C.G.L. 1927

Dear Sir:

I am in receipt of your letter of the 7th instant, the body of which reads as follows:

"Section 8 of Chapter 12284, Acts of 1927, provides for the receipts and payments of money received by the State Tuberculosis Board by the Treasury of the State of Florida.

"I am today in receipt of a check from the Tuberculosis Board for a donation received by them for the purpose of installing radio head sets in the rooms of the Tuberculosis Hospital. They asked that this be placed in the State Treasury and the Comptroller's warrant be drawn in payment of an invoice for radio head sets purchased by the State Tuberculosis Board.

"Please give me your opinion as to whether or not this money should be sent by the State Tuberculosis Board to the State Treasury and warrant be drawn in payment of invoice or whether or not a donation of this character could be received by the State Tuberculosis Board and paid out by them for the purpose of which such donation was made."

Section 3309, Compiled General Laws of Florida, 1927, creates the State Tuberculosis Board.

Section 3311 provides for said Board to determine the location of a sanatorium.

Section 3312 provides that the State Tuberculosis Sanatorium when erected shall be operated by and under the direction and control of said Board.

Section 3316 provides that the said Board shall be a body corporate and among other powers may receive donations and bequests.

Section 3315 provides that "the Treasurer of the State of Florida shall receive and pay out all monies and funds provided for in this law, or which shall come into the hands or control of the State Tuberculosis Board in any way or manner for the purposes hereof."

STATE TUBERCULOSIS BOARD

While the State Tuberculosis Board, under Section 3316, is made a body corporate, it is nevertheless a State Department or public State body and under the statutes, above referred to, it would seem proper for donations coming to said Board to be transmitted to the State Treasurer.

Donations made for a specific purpose, such as is mentioned in your letter, may properly be received and used for such purpose when made for the benefit of the Sanatorium or comfort and benefit of patients therein. The fact that a donation is made for a specific purpose would not seem to alter the propriety of the same being transmitted to the State Treasurer and handled through the medium of a State warrant from the Comptroller.

March 25, 1938.

FEES—REMITTING TO STATE TREASURER UNDER
CHAPTER 18284, ACTS 1937

Dear Sirs:

You request my opinion as to whether or not you are authorized to maintain bank accounts for the purpose of depositing fees as they are collected and remit same to the State Treasurer by check at regular intervals. It is my understanding that the only withdrawals which would be made from such bank accounts would be by checks to the State Treasurer as aforesaid.

This is an administrative practice which has generally been followed for some time in connection with other State Boards and is not inconsistent with the provisions of Chapter 18284, Laws of Florida, Acts of 1937.

September 14, 1937.

STATE TUBERCULOSIS SANATORIUM—CONSENT TO SURGICAL
TREATMENT—POST MORTEM EXAMINATIONS—PATIENT'S
DEPARTURE AGAINST ADVICE OF PHYSICIANS

Dear Sir:

You request information relating to certain conditions that may be expected at the State Tuberculosis Sanatorium from time to time. I shall give you my opinion on these matters in the order in which you have requested same.

I find no statute requiring that written permission be given by the patient or by the patient's nearest relative or guardian before any surgical treatment can be attempted. It stands to reason, however, that surgical treatment should not be resorted to without the consent of the party or parties concerned unless in case of dire emergency when the delay incident to obtaining such consent would imperil the life of the

STATE TUBERCULOSIS BOARD

patient. With these principles in mind I believe that the forms which you have submitted are sufficient to evidence the consent of the parties concerned to such surgical treatment and I believe they should be signed in every instance where practicable.

In regard to permission to perform an autopsy it is my opinion that your form covering this matter is sufficient. Such form, to be effective, must be signed by the proper person. The following is from Volume 8, Ruling Case Law, pages 686 and 687:

It is generally conceded that on the death of a husband or a wife, the primary and paramount right to possession of the body, and to control the burial or other legal disposition thereof, is in the surviving spouse, and not in the next of kin. This right is dependent on the peculiar circumstances of each case, or waiver of such right by consent or otherwise, but if the parties were living in the normal relations of marriage, it will require a very strong case to justify a court in interfering with the wish of the survivor.* * *

"If there is no surviving husband or wife, the right of burial of a dead body is in the next of kin in the order of their relation to the decedent, as children of proper age, parents, brothers and sisters, or more distant kin, modified as it may be by circumstances of special intimacy or association with the decedent. Parents have the right to the possession of the body of their dead child and to bury it, but where the parents have been divorced and the custody of their child awarded to the mother she, and not the father, has the right to bury the child at its death."

The following is from the opinion of the Supreme Court of Illinois in the case of *People vs. Harvey*, 122 Northeastern 138, text page 141:

"A physician who performs an autopsy upon a dead body under legal sanction, with ordinary care and skill, is not liable in an action to the family of the deceased for the mutilation of the body without their consent. *Cook vs. Walley*, 1 Colo. App. 163, 27 Pac. 950; *Young vs. College of Physicians*, 81 Md. 358, 32 Atl. 177, 31 L.R.A. 540. See, also, 13 Cyc. 280, and cases cited; 8 R.C.L. 695; *Palenzke vs. Bruning*, 98 Ill. App. 644."

In regard to a patient's leaving the sanatorium against the advice of physicians I find no law giving the sanatorium the right to hold him against his will. In my opinion the form which you submit dealing with this subject is sufficient. I might add this word of caution, however, that a person taking leave of the hospital and signing such form must understand what he is doing. In other words, a man who is delirious is not likely to understand what he is signing and the sanatorium would not be justified in permitting him to depart.

SECTION 39

STATE WELFARE BOARD

March 30, 1938.

ADMINISTRATIVE EXPENSE—PAYABLE UPON BOARD'S APPROVAL

Dear Sir:

I have your letter of March 24th enclosing a list of expenses incurred by the office of the State Treasurer and Comptroller in connection with the issuing and paying of warrants drawn in connection with the Social Welfare Act. You request my opinion "as to whether or not these administrative expenses can be paid direct from the State Welfare Fund as are the administrative expenses incurred by the State Welfare Board."

In order to answer this question it becomes necessary to ascertain from the Act whether or not there is an appropriation that could be charged with said expenses. Section 23 of the Act appropriates \$3,400,000 "to be used for old age assistance and to aid the needy blind and administrative costs of performing the duties of the Board under this Act."

This portion of Section 23 apparently means costs of the Board exclusively. However, \$400,000 is appropriated "to be used for dependent children's assistance and for administrative costs of this Act at the discretion of the State Welfare Board."

It is obvious that your question must be answered in the affirmative provided the State Welfare Board has authorized or approved your expenses.

December 2, 1937.

CHAPTER 18285 DOES NOT APPEAL OR AFFECT CHAPTER 16804

Dear Sir:

I have received a letter dated to-day, * * * requesting my opinion on the following questions:

1. Does Chapter 18285, Acts of 1937 repeal, Chapter 16804, Acts of 1935?
2. Does Chapter 18285 affect Chapter 16804?

It is my opinion that Chapter 18285 does not repeal, or affect in any way, Chapter 16804, Laws of Florida, Acts of 1935.

May 12, 1937.

COMMISSIONER—STATE OFFICE—APPOINTMENT
UNCONSTITUTIONAL*Dear Sir:*

In your letter of this date you request my opinion as to whether the position of Commissioner of Social Welfare as created under the Social

STATE WELFARE BOARD

Welfare Act of 1935 is a State office, or a mere employment, and if the former, whether that portion of the Act providing for a Commissioner's appointment by the State Board, is constitutional.

It is my opinion that the position as created by the Act is a State office, which should be filled either by election or appointment by the Governor, and that the provision for the employment by the State Board of such Commissioner of Social Welfare is in conflict with Section 27 of Article III of the Constitution of Florida.

June 11, 1938.

**DECEASED'S ESTATE—WARRANT TO ISSUED UNDER
CHAPTER 18285 PAYABLE TO**

Dear Sir:

I acknowledge receipt of your letter of June 1st, 1938, to which is attached letter to you dated May 17, 1938, from Mr. * * *, together with State Warrant No. 240136 B for \$14.00, payable to * * *, under Chapter 18285, Laws of Florida, Acts of 1937. It is stated that this Warrant represents a monthly allowance to the payee by the State Welfare Board.

The letter of Mr. * * * states that the Payee, Mr. * * *, died on Sunday, May 15, at 8:00 P. M. That this check was in the Post Office there before his death, but due to the half holiday on Saturday and closing Sunday, the check was not received and endorsed for payment by the Payee. Mr. * * * asks if it would be possible under the circumstances to have these funds transferred to the niece of Mr. * * *, with whom he lived, to help defray the funeral expenses.

These circumstances present an unfortunate situation. The Legislature in the enactment of Chapter 18285, made no provision for the negotiation and payment of warrants issued under Section 17 of said Act, where the Payee dies subsequent to the issuance thereof and prior to its endorsement or negotiation by him. The allowance having been made and the warrant issued and forwarded to the Payee prior to his death, the amount of funds represented thereby upon the death of the Payee became a part of the assets of his estate, and I am of the opinion that you are without authority of law to transfer such funds to another.

September 30, 1938.

**DEPENDENT CHILDREN—COMPTROLLER TO ISSUE WARRANT TO
GUARDIAN—CHAPTER 18285, ACTS 1937, SECTION 5884, C.G.L.**

Dear Sir:

I have your letter of September 30th which reads as follows:

"Chapter 18285, Acts of 1937, provides for the aid of dependent children under the State Welfare Board."

STATE WELFARE BOARD

Section 19 provides in part as follows:

"Assistance shall be granted to any dependent child living with its parents, relatives, guardians or in some family home."

"Would any parent, relative, guardian or some one in a family home designated by the State Welfare Board be legally entitled to receive the warrant for the use of the dependent children as mentioned in this Act.

"In drawing warrants in payment of dependent children the question now arises as to whom the warrant should be drawn in favor of.

"Should the warrant be drawn in favor of the person who the State Welfare Board may designate is the guardian of the dependent children as * * * or

"Should the warrant be drawn * * * as guardian of * * * or

"Should a separate warrant be drawn to * * * as Guardian for * * * and another warrant drawn to * * * as Guardian for * * * and another warrant be drawn to * * * as Guardian for * * *, or

"Should the Comptroller require that the State Welfare Board in making their requisition for warrants only list the name of the Guardian, such as * * * or should the Comptroller require that the list contain the following information:

"* * *, mother of * * * or

"Should the list contain * * *, mother of * * *, giving the age of each child and the amount of money to be paid to each child."

Your first question is the most important one of all and I believe that my opinion upon this question will largely control the answer to the remaining questions.

Section 19 as quoted by you is the only Section that throws any light upon the question as to whom a warrant could be drawn for the use of the dependent children mentioned in the Act. It is to be noted that the assistance is granted to the child who is living with its parents, relatives or guardian or in some family home meeting the standards of care and health fixed by the laws of this State and the rules and regulations of the State Board of Social Welfare. When we read this in connection with Section 20 of the Act which provides:

"The State Board may make such additional investigations as it may deem necessary, and shall make such decision as to the

STATE WELFARE BOARD

granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this Act."

Apparently, the Legislature had in mind that the applicant would be a parent, relative, guardian, etc., as provided in Section 19. Otherwise, it would have been unnecessary to have said that assistance would be granted to anyone except a guardian unless it was the intention of the Legislature that the warrant could be made payable to anyone coming within the meaning of the word parent, relative, guardian, etc.

In considering a construction that is to be placed upon any part of this Act, the Legislature has established for us a guide. Section 24 provides:

"This Act shall be liberally construed to the end that the work of social welfare shall be consummated as equitably and expeditiously as possible."

I have been informed by the Welfare Board that there will be many applications similar to the ones that have already been made and if the matter can be simplified and expeditiously handled, it will not only save the Board much trouble, annoyances and expense as well as your Office, but will permit the aid to reach the dependent children much faster and without having to deduct any expenses that might otherwise be occasioned from the assistance to be rendered the child.

It possibly could be said that this Act should be read in connection with Section 5884 of the Compiled General Laws of 1927, which provides that the mother and father shall be the natural guardians of their children, and upon the death of either, the survivor would then be the guardian, and that they should "have the right, without special authority or appointment of the court, to collect and receive, manage and dispose of any personal property inherited by or otherwise accruing to the benefit of the child during infancy where the amount of same shall not exceed \$500.00. * * *"

It is obvious that the mother and father if living, or the survivor of either would be undoubtedly the proper person to receive any benefit accruing to the child without the necessity of court action. The question, therefore, arises as to whom the benefit should be paid in the event the father is still living but has abandoned the dependent children who are still living with their mother. According to the information left in this Office by the State Welfare Board, they have a rule covering such contingency.

"(d) Continued absence from the home on the part of a parent of a dependnt child for whom assistance is requested shall mean absence due to the desertion of a parent, to separation of the parents, to divorce of the parents or to incarceration

STATE WELFARE BOARD

of a parent by law. When the continued absence is due to desertion or to separation, the same not being a judicial separation, such absence must be continuous for a period of one year prior to the date of filing the application for assistance for the dependent child."

I am of the opinion that this rule is adequate protection for payment being made to the mother for her minor dependent children. The rule that the Board has promulgated which I understand is a part of the contract between the Board and the United States Government, which said Federal Government furnishes part of the aid to pay the benefits, is in conformity with the law. This seems to be borne out by the case of *Draus vs. International Silver Co.*, 135 Atlantic, 437; the material parts of which are:

"The obligations of minor to his parents are obedience, subjection, and his earnings, if any, while those of parents are protection, education, and support. This was true at common law, so far as the father was concerned, and these obligations are strictly reciprocal. By our statute, the obligations of the mother and the rights of guardianship are now the same as the father's and the 'powers, rights, and duties' of father and mother are equal.

"As between the minor son and his father, in the present case, the abandonment had the effect of emancipating the son, and the father lost his right to the wages of the boy. * * * While the father's abandonment brings a change of status as between him and the minor child, it obviously cannot affect the existing status of the mother and the child. The mother for three years had been the head of the family. Upon her rested the obligation to support the minor, living with her, with a reciprocal right on her part to the wages of the minor."

By analogy, it would, therefore, appear to me that if the father has abandoned the child, the mother would be its real guardian and entitled to make application and receive on behalf of the minor dependent child any benefits accruing to it under the terms of Chapter 18285, Acts of 1937.

To the same effect is the case of *Briscoe vs. Price*, 113 N. E. 881 where the Court said:

"Where a husband abandoned his wife and family, he lost all claim to the labor and earnings of the children, and the wife was entitled * * * to the earnings of her minor children."

Also see the case of *O'Brien vs. City of Philadelphia*, 64 Atlantic 551, and *Newton vs. Cooper*, 79 S. E. 356.

STATE WELFARE BOARD

In 46 C. J. Parent and Child, 1283, I find the rule stated as follows:

"While the parents are living together the mother ordinarily has no right to the child's services or earnings. But where the maintenance of the child devolves upon the mother because of the father's desertion, or imprisonment, or where the mother is the only recognized parent of the child, the services and earnings of such child belong to the mother. * * *"

When I read these decisions in connection with Section 7171 of the Compiled General Laws of 1927, which provides:

"Whoever * * * wilfully abandons such child or children * * * wilfully or unlawfully and negligently deprives of necessary food, clothing or shelter * * * shall on conviction, be fined * * *."

I am further convinced that it was the intention of the Legislature that the benefits under the Act should be paid to who ever has the care, custody and control of the child for the use of such child because it seems to be plain that under this Statute, anyone who has the care of a child who abandons such child, is guilty of a crime, and is, therefore, under a duty to support such a child. I think the child owes a corresponding duty to such person, and should turn over to him any earnings that it may receive, to be used by such person for the benefit of the child. It would seem, to carry this a step further, that any benefits accruing to a child could properly be paid to such person to be used for the benefit of such dependent child.

I, therefore, am of the opinion that whenever the State Welfare Board certifies to you that any dependent child is living with an applicant who is either a parent, relative, guardian or the head of a family who is maintaining a family home designated by the State Welfare Board, that such person is, therefore, legally entitled to receive a warrant for aid under said Act to such dependnt child or children, and that the warrant should be drawn in favor of such person as either a mother or father, relative, guardian, et cetera, as such for his or her minor dependent child, or his or her minor dependent cousin, etc.

I think the certificate should give you the age of each child and the amount of money accruing to the benefit of each child.

September 14, 1937.

FUNDS—PUBLIC ASSISTANCE—DISBURSEMENTS UNDER
CHAPTER 18285, ACTS 1937

Dear Sirs:

Under date of June 26th, 1937, in an opinion to Honorable * * *, I stated the following:

STATE WELFARE BOARD

"Under Section 13 of Chapter 18285 and the Constitution of Florida, all funds must be withdrawn from the Treasury only on a warrant of the Comptroller countersigned by the Governor. It is my opinion that under the above Act and the Constitution, all disbursements of State and Federal funds should be made upon the requisition of the State Board of Social Welfare upon the State Comptroller, who should draw his warrant, countersigned by the Governor of the State of Florida, upon the State Treasurer, payable to the payees designated by the said State Welfare Board in its requisition."

You request my further opinion as to what "payee" may be designated by the State Welfare Board in its requisition. Section 13 of Chapter 18285, Acts of 1937, reads as follows:

"DEPOSITARY OF FUNDS—All State and Federal funds to be administered under this Act shall be deposited with the State Treasurer in a separate account and shall be withdrawn only by warrant of the Comptroller countersigned by the Governor, *payable to the State Board or to its order or nominee.*" (Italics ours.)

It is apparent from the provisions of Section 13 above set forth that the State Board may elect to either designate itself as payee or may designate the beneficiaries to whom payment is ultimately to be made.

June 29, 1937.

OFFICIAL BONDS—COMPTROLLER NOT AUTHORIZED TO SIGN

Dear Sir:

I am in receipt of your letter of this date in which you state that you have submitted the official bonds of members of the State Welfare Board, created under the provisions of Chapter 18285, Acts of 1937, to the Comptroller for approval and you state that he hesitates to approve the same for the reason he is not sure there is any law requiring his approval of these particular bonds. You further state that with the approval of the State Comptroller my opinion is requested as to whether you should issue commissions to the members of the State Welfare Board without the Comptroller first having approved the bonds filed in connection therewith.

In reply I beg to say after a careful search of the State Constitution and the statutes of the State, I fail to find any provision requiring the approval of these particular bonds by the State Comptroller. In such situation commissions to said officers may be issued by you without the Comptroller first having approved bonds filed by these officers.

CHAPTER IX

TAXATION

SECTION 1

DELINQUENT TAXES

April 14, 1937.

CAPITAL STOCK TAX UNDER CHAPTER 14677, ACTS 1931

Dear Sir:

In your letter of the 13th instant you state that some attorneys are offering to pay one year's tax under Chapter 14677, Laws of Florida, Acts of 1931, for a corporation which never paid any capital stock tax and which has been dissolved under the provisions of Chapter 16880, Acts of 1935, and ask me to advise you if there is any legal objection to your accepting this tax.

Chapter 14677 imposed the payment of the capital stock tax by all corporations except such as are therein specifically exempt, and the fact that the corporation was dissolved under the provisions of Chapter 16880 for failure to pay such tax, does not satisfy the obligation to the State.

In other words, the tax became delinquent upon failure of the corporation to pay same if and when required, and there is no legal objection to your accepting same if payment is offered, even after dissolution of the corporation.

March 9, 1937.

DISPOSITION OF SURPLUS ARISING ON SALE OF PROPERTY FOR TAXES

Dear Sir:

I acknowledge receipt of your letter of recent date in which you ask the following questions:

"Under Chapter 17457, Acts of 1935, the Clerk of the Court, in disbursing the monies arising from the sale of lands for delinquent taxes, is required under Section 8 to pay any surplus to the owner of such lands if his address is known.

"Will you please advise me who can be considered the owner as used in this section. Is it the holder of the legal title as of the date of the application for a tax deed or the holder of a title as of the date of the sale, and must the ownership be of record?

"Is there a definite rule which the Clerk of the Court can follow in determining the owner and which will relieve him of

DELINQUENT TAXES

the responsibility of having paid money wrongfully to a person not entitled to it?"

It is my opinion that Sections 8 and 9, in referring to the balance that shall be paid to the owner, means the one who owns the property at the time of the sale. It is clear that the owner of the property at the time of the securing of the tax certificate, who has sold his interest in the property, would have no right to the surplus.

I do not think that the ownership need appear of record if the Clerk is certain that the record owner has sold the property and is no longer entitled to the surplus.

It is impossible to lay down a definite rule by which the Clerk would always be protected in paying out money to the owner as described in Sections 8 and 9. If he is not certain as to who is the owner of the property, he should not pay the money out but hold it waiting definite information on this subject. If two or more parties should claim to be the owner, the Clerk could then file a bill in equity tendering the money into the Court and requiring the claimants to inter plead to determine who is the owner of the property.

March 10, 1937.

FUTCH BILL—SPECIAL TAX ON LOCAL HEALTH UNIT—PAYMENT ONLY IN CASH WHEN DELINQUENT

Dear Sir:

This is in reply to your inquiry as to whether or not a tax levied under the provisions of Chapter 14906, Laws of Florida, Acts of 1931, is a tax for a State purpose and payable under the Futch Bill only in cash.

Chapter 14906 provides that the proceeds of the tax, when collected, shall be paid to the State Treasurer for the account of the State Board of Health. Such funds are to be expended by the State Board of Health solely for the purpose of carrying out the intent and object of that statute in the particular county affected, with the approval of the County Commissioners.

It is my opinion that this is a tax to be expended by a State agency for a State purpose within a limited territory. It would, therefore, follow that such a tax when delinquent would be payable only in cash.

July 14, 1938.

FUTCH BILL—EXPIRATION OF PRIVILEGES AFFORDED UNDER CHAPTER 16252, AS AMENDED BY CHAPTER 17400

Dear Sir:

I acknowledge receipt of your letter of recent date in which you state:

DELINQUENT TAXES

"Will you please advise me at your earliest convenience whether or not the privileges afforded delinquent tax payers under the provisions of Chapter 16252 (Futch Act) as amended by Chapter 17400, Acts of 1935, will expire on July 1, 1938, apparently the final limit as provided by Section 1 of both Acts, and if this is not the expiration date will you please interpret the meaning of July 1, 1938, as used in these Acts."

Section 1 of Chapter 16252 provided that all tax certificates held against real estate by the State of Florida for taxes against any such real estate for the year 1931 and previous years should not be sold by the State of Florida except to the bona fide owner during a period of time beginning with the date the Act became effective and ending the first day of July, 1938.

Section 4 of the Act is as follows:

"The provisions contained in Section 1 of this Act, shall on July 1, 1937, be extended for an additional period of fifteen years, as to all land upon which the taxes assessed for the years 1932, 1933, 1934, 1935 and 1936 shall have been paid in full prior to said July 1, 1937."

Chapter 17400, Laws of Florida, Acts of 1935, amended Chapter 16252 by providing all tax certificates for the year 1933 and previous years should be held, the difference, as you will observe, extending the benefit of this law for two additional years.

Section 4 was amended to read as follows:

"The provision contained in Section 1 hereof shall on July 1, 1939, be extended for an additional period of fifteen years as to all land upon which taxes assessed for the years 1934, 1935, 1936, 1937 and 1938 shall have been paid prior to July 1, 1939."

While Section 1 apparently provides for the unconditional holding of these certificates for a five-year period, the Supreme Court of the State, in the case of *State ex rel. Dowling vs. Butts*, 149 So. 746, held that the Act considered as a whole would not allow an unconditional withholding of these certificates but made it conditional upon current taxes being paid.

The Court in the *Dowling Case* refused to pass upon the constitutionality of Section 4 but Judge Ellis in his concurring opinion stated that the section was invalid.

The Futch Act made several concessions to delinquent taxpayers which it is not necessary to discuss in this opinion.

It is my opinion that the benefits accruing to the taxpayers under the provisions of the Futch Act expire on July 1, 1938, except in so far

DELINQUENT TAXES

as Section 4 extended the provisions of Section 1 for fifteen years, conditioned upon the payment of taxes for the years mentioned in this section, which is that the State will not sell the certificates so held for an additional period of fifteen years if the current taxes for the years 1934, 1935, 1936, 1937 and 1938 shall have been paid prior to July 1, 1939.

While I do not pass upon this question it is possible that if the Supreme Court upholds the constitutionality of this section they will write into this section the proviso which they wrote into Section 1, that current taxes upon the land in question must be paid for the entire additional fifteen-year period.

September 9, 1938.

OCCUPATIONAL LICENSE TAX—CHAPTER 18011—EXPENSE INSPECTION AND INVESTIGATION PAYABLE FROM COLLECTION OF REVENUE FUND

Dear Sir:

I acknowledge receipt of your letter of September 8, in which you state:

"Several Tax Collectors have suggested that it would be advisable if the State could send in outside men to assist in checking up on occupational license tax delinquencies.

"Has the Comptroller authority to employ such inspectors, and if so is he authorized to pay their salaries and expenses out of the 'Expense of Collecting Revenue' Fund, or should they be paid out of some other fund?"

Chapter 18011, Laws of Florida, Acts of 1937, which relates to occupational licenses, provides in Section 34 that the Comptroller may by audit, examination, inspection and investigation determine whether or not the reports made by the tax collectors and county judges are accurate, truthful and complete, etc. Under Section 33 of the Act, it is the duty of the tax collectors, in the event any license provided for under the Act or under any other law of the State of Florida shall remain unpaid for ninety days, to issue a warrant against the person liable for the payment of the license. The tax collector is also required to transmit to the Comptroller a list of persons who are liable for the payment of license taxes and who have not paid the same.

In order to comply with Section 34, such as investigating and determining the correctness of reports, it might be necessary for the Comptroller to send his employees into the various counties, and that would seem to have been contemplated by the Legislature in Section 34 of the Act, so it would be my opinion that the Comptroller would have authority

DELINQUENT TAXES

to send men into the various counties where he deems it advisable to check up on the payment of occupational licenses.

The General Appropriation Act of 1937 contains a miscellaneous appropriation for the expense of collecting revenue. This item is separate and apart from the regular appropriation for the Comptroller's Office. It is my opinion that this fund could be used for the payment of salaries of the employees above mentioned.

June 9, 1937.

TAX CERTIFICATES SALE—UNDER CHAPTER 18364, ACTS 1937

Dear Sir:

I acknowledge receipt of your letter of June 8, * * * requesting an opinion on the effect of Chapter 18364 on the sale of delinquent tax certificates.

From the letter * * *, I gather the following salient facts. On March 27, application was made to the clerk for the sale of certain delinquent tax certificates. No definite agreement was made to sell any particular certificate or certificates as the prospective purchaser wanted time to determine definitely the exact parcels of land he wished to purchase. Before definite agreement had been made for the purchase of a particular certificate Chapter 18364 was passed.

The clerk now has in his possession the applicant's check in the sum of \$1,301.86 for payment of the certificates and he requests of you what he should do relative to the completion of these sales.

Chapter 18364 provides that the Clerk of the Circuit Court shall not sell any certificates now held or owned by the State of Florida until after the first Monday in July, 1937. From the statements given to you by the clerk in his letter, no definite sale of these certificates had been made prior to the effective date of Chapter 18364. It is therefore my opinion that the clerk should refuse to sell these certificates until after the first Monday in July, 1937.

March 29, 1937.

TAX CERTIFICATES—TWO CASES DIFFERENTIATED

Dear Sir:

I acknowledge receipt of your letter of March 27, in which you ask that I distinguish the case of W. L. Draughon as Clerk and Seville Holding Company, a corporation, Appellants, vs. Martin E. Schultz, Appellee, decided by the Supreme Court of Florida on March 23, 1937, and the case of Moye vs. State ex rel. McCollum, 151 So. 501, decided by the Florida Supreme Court on October 28, 1933.

DELINQUENT TAXES

In the Moye case the Cupreme Court said:

"It is proper to permit redemption of tax sale certificates on payment of 'amount due for taxes', costs and charges which may be computed by applying millage tax levied for given year at least assessed valuation if that is less than the regular valuation."

The above case affirmed a peremptory writ of mandamus issued by the Circuit Court of DeSoto County compelling the Clerk of the Circuit Court to permit the redemption of a tax sale certificate for taxes for 1927 held by the State by applying the amount ascertained, based upon the assessed valuation of the property for a year subsequent to 1927, which valuation was less than the valuation for the year the property was sold for taxes.

It will be noted that in the Moye Case an application was made to *redeem* by the owner of the property, who contended that under Chapter 16252, Acts of 1933, commonly known as the Futch Act, that the owner of the property was entitled to redeem the "oldest certificate," where such oldest certificate was based on a valuation higher than a subsequent assessed valuation of the property, on the subsequent lower valuation. The Court affirmed the lower court and held it should be done.

In the Draughon Case, the Court held that where a tax certificate is owned by the State and that certificate is the oldest certificate, that the Clerk must require the amount of such certificate and interest thereon from the date of the certificate at the statutory rate and that he has no right to sell such certificate reduced to an amount less than the original sale because that in a subsequent year the assessed valuation of the property has been lowered, although after the purchase of the oldest certificate the other certificates may be redeemed according to the least assessed valuation of the land.

It will thus be seen that the distinction made by the Court in these two cases is that the owner may redeem his property, including the oldest certificate, according to the lowest valuation thereon, whereas if the Clerk sells the oldest certificate, that privilege is denied the purchaser.

SECTION 2

DOCUMENTARY STAMP TAX

November 2, 1937.

CORPORATIONS—UNDER THE PROVISION OF CHAPTER 15787,
1931—SECTION 1279, COMPILED GENERAL LAWS—SECTION
111, SUPPLEMENT, TAX MUST BE PAID UPON
TRANSFER OF STOCK

Dear Sir:

I acknowledge receipt of your letter of November 2, 1937, relative to documentary stamps.

On a perusal of the letter, it would seem the facts are these: To Corporation A were transferred twenty thousand shares of stock of the par value of \$100 per share of Corporation B. The shares were transferred by the executors of the Last Will and Testament of C, deceased. Corporation A was dissolved in accordance with the provisions of Section 44 of Chapter 1096, and all the assets of the corporation were distributed to the sole stockholders, who were the executors of the estate of C. Among the assets of Corporation A were the twenty thousand shares of stock of Corporation B. The question involved is whether or not the transaction falls within the provisions of Chapter 15787, Acts of 1931.

The question arises that since there was no sale of the twenty thousand shares of stock and they were merely distributed to the stockholders, whether or not the documentary stamp tax is due thereon.

Chapter 15787 applies to all transfers of legal title to shares and such transfers must bear the proper amount of the tax. The third paragraph of Schedule A of Chapter 15787 contains the following provision:

"On all sales, agreements to sell or memorandum of sales or delivery of, transfers of legal title to shares, or certificates of stocks or profits or interest in property or accumulations in any corporation or right to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sales, *whether entitling the holder in any manner to the benefit of such stock interest rights or not*, on each \$100.00 or fraction of the face value," etc.

It will be seen from the provisions of the Act above quoted that where shares of stock are transferred on the books of a corporation from the name of one person to that of another, even though the person to whom the transfer is made acquires no beneficial interest in the stock transferred to him, the tax must be paid.

DOCUMENTARY STAMP TAX

December 28, 1938.

DISSOLVED CORPORATIONS—WHEN STAMPS REQUIRED UNDER
CHAPTER 15787, LAWS OF FLORIDA, ACTS OF 1931*Dear Sir:*

I acknowledge receipt of your letter of December 22, 1938, in which you enclose a letter from * * *, in which they say:

"Almours Securities, Inc., was organized under Chapter 10096, Laws of Florida, 1925. The corporation has been dissolved in accordance with the provisions of Section 44 of Chapter 10096. The dissolution became effective on December 20, 1938, the date upon which proof of publication of the Certificate of Dissolution was filed in the office of the Secretary of State. The assets of the dissolved corporation are being distributed in kind to the stockholders under the provisions of Section 46 of Chapter 10096, which provides in part as follows:

"Sec. 46. Trustees Under Dissolution.—Upon the dissolution of any corporation under the provisions of Section 44 of this Act, or upon the expiration of the period of its corporate existence, limited by its certificate of incorporation, the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell, and convey the property, real and personal, and divide the monies and other property among the stockholders, after paying or adequately providing for the payment of its liabilities and obligations; * * *

"Included in the assets of Almours Securities, Inc., which are being distributed to the stockholders are a number of shares of stock of Florida corporations and a number of shares of stock of corporations organized under the laws of states other than Florida. Among the stockholders of Almours Securities, Inc., are several residents of Florida and several non-residents of Florida.

"The questions which you are requested to rule upon are:

"1. Does a distribution in liquidation by the directors of a dissolved Florida corporation of stock in a foreign corporation made to a non-resident stockholder of the dissolved Florida corporation require documentary stamps under the provisions of Chapter 15787, Laws of Florida, Acts of 1931?

"2. Does a distribution in liquidation by the directors of a dissolved Florida corporation of stock in a Florida corporation made to a non-resident stockholder of the dissolved Florida corporation require documentary stamps under the provisions of Chapter 15787, Laws of Florida, Acts of 1931?

DOCUMENTARY STAMP TAX

"3. Does a distribution in liquidation by the directors of a dissolved Florida corporation of stock in a foreign corporation made to a resident stockholder of the dissolved Florida corporation require documentary stamps under the provisions of Chapter 15787, Laws of Florida, Acts of 1931?

"4. Does a distribution in liquidation by the directors of a dissolved Florida corporation of stock in a Florida corporation made to a resident stockholder of the dissolved Florida corporation require documentary stamps under the provisions of Chapter 15787, Laws of Florida, Acts of 1931?"

The third paragraph of Schedule A of Chapter 15787, Acts of 1931, contains the following provision:

"On all sales, agreements to sell or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interests, rights, or not, on each \$100.00 of face value or fraction thereof 10c; * * *

It is my opinion that under the facts stated in question No. 1 no stamps are needed, but under the facts set up in questions Nos. 2, 3, and 4 stamps are required.

Under the facts mentioned in No. 1, should the books of the corporation be kept in Florida, so that the transfer would appear on the books of the corporation, it would be my opinion that stamps would be required, but I presume from question No. 1 that the books of the corporation are kept outside the State of Florida.

July 13, 1937.

RENEWAL NOTE—WHEN SUBJECT TO TAX

Dear Sir:

I acknowledge receipt of your letter of recent date in which you enclose a letter from * * *, relative to Chapter 17890, Acts 1937.

According to the attached letter, the series of notes was given in 1929, prior to the effective date of the Documentary Stamp Act. In January of 1937 an extension agreement was made by the maker and the holder of the notes whereby the interest rate was reduced from 8% to 6% per annum and the interest paid up to date.

DOCUMENTARY STAMP TAX

You ask my opinion whether or not under the facts stated the renewal notes require documentary stamps.

Section 1, Chapter 17890 provides as follows:

"When any promissory note is given in renewal of any existing promissory note, which said renewal note only extends or continues the identical contractual obligations of the original promissory note and evidences part or all of the original indebtedness thereby, not including any accumulated interest thereon and without enlargement in any way of said original contract and obligation, such renewal note shall not be subject to taxation under the provisions of Chapter 15787 * * *, if such renewal note has attached to it the original promissory note with cancelled stamps affixed thereon showing full payment of the tax due thereon and of any and all intervening renewals thereof."

It will be observed that in order for a renewal note to escape the tax it is necessary that such renewal note has attached to it the original promissory note with cancelled stamps showing that a previous tax has been paid and that the original contractual obligation is not changed. Under the facts set forth in the attached letter the interest rate has been lowered from 8% to 6%, thus changing the contract and no tax has been paid on the original note.

Under the circumstances mentioned it is my opinion that the notes executed under the January agreement require the affixation of documentary stamps.

SECTION 3

EXCISE TAX

January 25, 1937.

GRAPEFRUIT ADVERTISING TAX—REFUND OF AMOUNTS COLLECTED WITHOUT LEGAL AUTHORITY ON GRAPEFRUIT PURCHASED BY FEDERAL AGENCY

Dear Sir:

This is in reply to your request for my opinion as to whether or not excise taxes paid under Chapter 16857, Laws of Florida, Acts of 1935, on grapefruit purchased by the United States Department of Agriculture to the Florida Citrus Commission can legally be refunded. I respectfully call your attention to my opinion of January 4, 1937, in which I said:

"The United States Department of Agriculture is, of course, a Federal agency. As an agency of the United States government it is not subject to excise taxes levied directly or indirectly by the State of Florida."

It would appear that such excise taxes were being collected without any legal authority, and the question now arises as to whether or not such taxes as have been collected can now be legally refunded.

It would appear from the provisions of Chapter 16857 that the excise taxes collected are deposited in the State Treasury in a special fund known as the "Grapefruit Advertising Fund." This fund is actually under the control of the Florida Citrus Commission and does not constitute a part of the general revenue of the State. It would seem that the principles announced by the Supreme Court of Florida in the case of *New Smyrna Inlet District vs. Exch.*, reported in 1937 Southern 1 would be applicable to the circumstances here presented. While the Supreme Court in the *New Smyrna District* case was dealing with the refund of special assessments collected along with general ad valorem taxes the reasons advanced by the Court for requiring the refund in that case would sustain the legality of refunding the excise taxes paid on grapefruit purchased by the government. The following is from the opinion of the Court in that case:

"(1, 2) The Constitution expressly provides that 'no tax shall be levied except in pursuance of law,' section 3, article 9, and, when an ad valorem tax is levied upon property under an invalid enactment, the amounts of such taxes that were involuntarily paid may be recovered by the taxpayer in appropriate procedure that is not in effect on unauthorized suit against the state. Where the levy of an illegal tax may become a cloud upon title to real estate, payment of the tax to avoid the cloud or to avoid the imposition of substantial burdens upon property rights

EXCISE TAX

of the owner is not a voluntary payment. See *S. A. L. Ry. vs. Allen*, 82 Fla. 191, 89 So. 555; *A. T. & S. F. Ry. Co. vs. O'Connor*, 223 U. S. 280, 32 S. Ct. 216, 56 L. Ed. 436, Ann. Cas. 1913C, 1050.

(3, 4) The tax levy was not made for general governmental purposes, but to provide specific public improvements for the special benefit of the district that is taxed for the project, and, if the statute authorizing the improvement be repealed or the project be abandoned, taxes paid in and not properly expended may be recovered. The tax is collected along with other governmental taxes under similar penalties and burdens to the taxpayer; and, the levy being illegal, the taxpayers may recover amounts paid though no protest was made to the collection of the tax as being illegal, unless the tax levy be legally validated and the proceeds are used for a valid purpose."

I have carefully considered the case of *Seaboard Air Line Railway vs. Allen*, 89 So. 555, in which the Supreme Court of Florida denied the right to recover taxes improperly assessed in an action brought against the Tax Collector after the funds had been remitted to the State Treasurer. Inasmuch as the taxes collected on grapefruit continue under the control of the Florida Citrus Commission, the *Allen* case would not be in point.

It is, therefore, my opinion that the refund of such excise taxes heretofore paid on grapefruit purchased by the United States government would be legal and proper.

January 4, 1937.

GRAPEFRUIT SOLD TO FEDERAL AGENCY NOT SUBJECT TO EXCISE TAX PROVIDED FOR IN SECTION 6 OF CHAPTER 16857, ACTS OF 1935

Dear Sirs:

This is in reply to your request for my opinion as to whether or not grapefruit sold to the United States Surplus Commodities division of the United States Department of Agriculture for relief purposes is subject to the excise tax provided for in Section 6 of Chapter 16857, Laws of Florida, Acts of 1935.

Section 6 reads as follows:

"That there is hereby levied and imposed until July 1, 1937 an excise tax of three cents on each standard packed box of grapefruit grown in the State of Florida."

The United States Department of Agriculture is, of course, a Federal agency. As an agency of the United States Government it is not

EXCISE TAX

subject to excise taxes levied directly or indirectly by the State of Florida.

In my opinion, rendered under date of September 24, 1936, I expressed substantially this same view in regard to the payment of gasoline taxes on gasoline used in forestry projects sponsored by a Federal agency. It would seem to me that this would apply equally as well in the case of grapefruit as gasoline and it is therefore my opinion that such grapefruit is not subject to the excise tax hereinabove referred to.

In support of my views I cite the case of Panhandle Oil Company vs. State, reported in 277 United States Reports 218 and 72 Law Edition 857. I also cite the case of Bibb Graves vs. Texas Company reported in 80 Law Edition 824.

SECTION 4

EXEMPTIONS

August 11, 1937.

AUTOMOBILE TRAILERS—PLANT MANUFACTURING NOT EXEMPT UNDER SECTION 12, ARTICLE IX CONSTITUTION

Dear Sir:

I acknowledge receipt of your letter of August 2, in which you state:

"Section 12 of Article 9 of the State Constitution provides for exemption from taxes industrial plants established in the State after July 1, 1929 engaged primarily in the manufacture of automobile parts, etc.

"Since that amendment was adopted the production of trailers in connection with automobile use and operation has become an industry in this State.

"Will you please advise me if a plant manufacturing automobile trailers would be entitled to taxation exemption provided by this section of the constitution."

Article IX, Section 12 is as follows:

"For a period of fifteen years from the beginning of operation, all industrial plants which shall be established in this State on or after July 1, 1929, engaged primarily during said period in the manufacture of steel vessels, automobile tires, fabrics and textiles, wood pulp, paper, paper bags, fiber board, automobiles, automobile parts, aircraft, aircraft parts, glass and crockery manufacturers and the refining of sugar and oils, and including by-products or derivatives incident to the manufacture of any of the above products, shall be exempt from all taxation, except that no exemption which shall become effective by virtue of this amendment shall extend beyond the year 1948."

From a perusal of the above section, it will be observed that automobile tires, automobiles and automobile parts are exempt. I do not think that automobile trailers could be construed to be either of the three aforementioned articles or a by-product or derivative incident to their manufacture.

It is, therefore, my opinion that automobile trailers are not entitled to tax exemption under the section and article referred to.

December 9, 1937.

CAPITAL STOCK TAX—CHAPTER 14677 AS AMENDED BY CHAPTER 15726 EXEMPTS ONLY CORPORATIONS NAMED

Dear Sir:

On the 7th day of November, 1931, in an opinion rendered relative to the Gandy Bridge Company, I held that this corporation was exempt

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from paying a franchise tax under the provisions of Chapter 14677, Acts of 1931, as amended by Chapter 15726, Acts of 1931.

Chapter 14677 required all corporations except such as are specifically exempt in Section 6 of the Act, to file certain reports with the Secretary of State and to pay a tax levied under Section 2.

Section 6 of the Act is as follows:

"The following shall be exempt from the provisions of this act: railroad companies, Pullman companies, telephone and telegraph companies, bank and trust companies, building and loan associations, insurance companies, cooperative marketing associations and corporations not for profit."

Section 6 of this Act was amended by Chapter 15726, Laws of Florida, Acts of 1931, to read as follows:

"Section 6. The following shall be exempt from the provisions of this act: railroad companies, Pullman companies, telephone and telegraph companies, bank and trust companies, building and loan associations, insurance companies, cooperative marketing associations and corporations not for profit; *these corporations and companies so exempted from the operation of this act being regulated by or paying excise taxes under other provisions of law.*"

It will be observed that Section 6 as amended differs from the original Section only by the word above italicized. It was my original construction of the Act that the Legislature meant by the amendment to Section 6 to exempt the corporations mentioned specifically in Section 6 and other companies regulated by or paying excise taxes under other acts.

Subsequent to the rendition of the above opinion the Supreme Court of Florida had certain provisions of this Act before it for consideration in the case of Jacksonville Gas Company, et al. vs. Lee, 148 So. Reporter, page 188. While the Court did not in this case specifically pass on the meaning of the amendment to Section 6 it was stated in the opinion:

"It is contended that, 'as Chapter 14677, as amended by Chapter 15726 (Ex. Sess., 1931) levying a tax upon the capital stock of corporations, exempted from its operation all railroad companies, Pullman companies, telephone and telegraph companies, bank and trust companies, building and loan associations, and corporations not for profit, giving as a reason for such exemption that all these corporations and companies so exempted from the operation of this Act being regulated by or paying excise taxes under other provisions of law'."

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On reviewing the original opinion on the acts in question and upon a study of the Jacksonville Gas Company case it is now my opinion that only those corporations specifically mentioned in Section 6 are exempt from the provisions of said Chapter and that the sentence added to original Section 6 by amended Section 6 is only explanatory of the reasons why the corporations and companies mentioned in said Section were exempted from the provisions of the Act.

June 30, 1937.

CAPITAL STOCK TAX—LIABILITY OF CORPORATIONS ENGAGED IN INDUSTRIES EXEMPT UNDER PROVISIONS OF ARTICLE IX, SECTION 12 OF THE CONSTITUTION

Dear Sir:

You request my opinion as to whether or not a corporation organized under the laws of another State, now ready to enter this State to engage in an industry exempt from taxation under the provisions of Article IX, Section 12 of the Constitution of Florida, as amended in 1930, is exempt from payment of charter tax and capital stock tax by reason of such Constitutional provision. The capital stock tax is imposed under the provisions of Chapter 14677, Laws of Florida, Acts of 1931, as amended by Chapter 15726, Laws of Florida, Acts of 1931, while the charter tax is imposed under the provisions of Section 6582, Compiled General Laws of Florida, 1927.

The following is Article IX, Section 12 of the Constitution as amended in 1930:

"For a period of fifteen years from the beginning of operation, all industrial plants which shall be established in this State on or after July 1, 1929, engaged primarily during said period in the manufacture of steel vessels, automobile tires, fabrics and textiles, wood pulp, paper, paper bags, fiber board, automobiles, automobile parts, aircraft, aircraft parts, glass and crockery manufacturers and the refining of sugar and oils, and including by-products or derivatives incident to the manufacture of any of the above products, shall be exempt from all taxation, except that no exemption which shall become effective by virtue of this amendment shall extend beyond the year 1948. The exemption herein authorized shall not apply to real estate owned and used by such industrial plants except the real estate occupied as the location required to house such industrial plants and the buildings and property situated thereon, together with such lands as may be required for warehouses, storage, trackage and shipping facilities and being used for such purposes."

Considering Chapter 14677, Laws of Florida, Acts of 1931, as amended, the Supreme Court of Florida, in the case of Gray as Secretary of

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State vs. Central Florida Lumber Company, 104 Fla. 446, text page 455. classified the tax thereby imposed as an excise and not a property tax. I call your attention to the following from the opinion of the Court in that case:

"The tax is imposed as a franchise tax on corporations authorized to transact business in this state. *It is not a property tax imposed on the stock or other assets of the corporation.* It is a tax on the corporate franchise which include the privilege whether exercised or not, of issuing and using when issued both 'par value' and 'no par value stock.' The privilege to issue in either case *bears no necessary relation to the value of the stock or the assets of the corporation and the tax is imposed without reference to either.* Roberts & Sc. Co. vs. Emerson, 271 U. S. 50, text 55, 46 Sup. Ct. Rep. 375, 70 L. Ed. 827; Flint vs. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. Rep. 342; Clay Products vs. United States, 52 Fed. (2nd) 1063; Lee vs. State Tax Commissioner et al. (Ala.) 123 So. 6." (Italics ours.)

I call your attention to the fact that Article IX, Section 12 of the Constitution, above set forth, grants the exemption "from all taxation" to "all industrial plants." Under this provision of the Constitution it is immaterial whether an industrial plant is owned by a corporation, a partnership or an individual. It is clear that the exemption is to apply to the *plant*. This view is further strengthened by the second paragraph which excludes from exemption real estate owned and used by industrial plants for purposes other than those connected directly with the operation of the plants. It would follow, therefore, that any tax imposed upon a corporation for the privilege of exercising its functions as a corporation would not be a tax on an industrial plant. It is not even a privilege tax exacted for the privilege of operating an industrial plant. It is simply an excise tax levied for the privilege of being a corporation. To use an exaggerated example, a corporation owning an industrial plant exempted from taxation under the Constitution would have no more logical claim to exemption from the tax imposed under Chapter 14677 than an individual owning such an industrial plant would have for exemption from payment of poll tax.

While I am inclined to agree that the exemption from "all taxation" would include exemption from excise tax levied upon the owner of an industrial plant for the privilege of carrying on any of the functions of the exempted industrial plants, I do not believe that this exemption applies to an excise tax imposed for the privilege of continuing as a corporation without regard to what activities the corporation might engage in.

My attention has been called to several authorities, including the following cases: Adams vs. Tombigbee Mills, 78 Miss. 676, 29 So. 470;

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City of Jacksonville vs. Glidden Co., 169 So. 216; City of Jacksonville vs. Continental Can Co., 151 So. 488; Citizens Bank vs. Parker, 192 U. S. 73; and Hancock vs. Singer Manufacturing Co., 62 N. J. L. 289, 41 Atl. 846. In the Adams case (*supra*) a different situation was presented, in that the tax involved was levied upon the capital stock of a corporation as a property tax. In the last two cases mentioned the exemption from taxation was included in the corporate charter of the specific corporations involved in which the corporate structure was of necessity recognized. As I have hereinabove pointed out, it makes no difference whether an industrial plant is owned by a corporation or not to bring it within the provisions of our constitutional amendment, which distinguishes the present problem from the problems presented in the two cases last referred to.

What I have said in regard to Chapter 14677, Laws of Florida, Acts of 1931 as amended, applies with equal force to Section 6582, Compiled General Laws of Florida, 1927. For the reasons hereinabove stated it is my opinion that such a corporation as the one to which you refer would not be exempt from payment of the excise taxes provided for in the statutes referred to, under the provisions of said Article IX, Section 12.

January 17, 1938.

CAPITAL STOCK TAX—CHAPTER 14677—WHEN EXEMPT UNDER
SECTION 16, CHAPTER 14764, AS AMENDED BY
CHAPTER 18026, 1927

Dear Sir:

I have your letter of January 6, in which you state:

"I have received your opinion dated December 9, 1937 on the exemption of sections of Chapter 14677 as amended by Chapter 15726. I am acting in accordance therewith.

"There has now arisen a question whether certain corporations that would not be exempted from the Corporation Capital Stock Tax by the specific terms of the Corporation Capital Stock Tax Law (Chapter 14677) but which claim exemption under Section 16 of Chapter 14764. I have in the files of this office corporations doing business in Florida which the records show to be certificated carriers under the provisions of Chapter 14764.

"Please advise if such corporations by reason of Sections 16 of Chapter 14764, Acts of 1931, are exempt from the payment of the Corporation Capital Stock Tax."

The Legislature enacted Chapter 14677, Laws of Florida, Acts of 1931, which is an Act requiring corporations to file annually with the

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Secretary of State certain reports and to pay a certain tax thereon, but the same Session of the Legislature also passed Chapter 14764, which is an Act providing for the supervision and regulation of motor carriers and imposing a mileage tax on such carriers. Section 16 of this Act, after first imposing the mileage tax, contains this provision:

"Provided further, that the mileage tax provided for in this section shall be in lieu of all other taxes and fees of every kind, character and description, State, County or Municipal, except ad valorem taxes levied upon the property other than motor vehicles of such automobile transportation companies and except the gasoline tax, and except the motor vehicle license tax as now or hereafter provided for by law."

Chapter 14764 was amended by Chapter 18026, Laws of Florida, Acts of 1937. Section 3 of the amendatory Act, in amending Section 16 of Chapter 14764, carried forward the identical exemption provision as was in the original Act.

The courts of this State, following the general law, have held that an exemption provision in an act must be strictly construed against the taxpayer. In other words, unless it clearly appears from the law that the individual or corporation or property is exempt the tax must be paid.

If Chapter 14677, Laws of Florida, Acts of 1931, could be construed as strictly a police measure, it would be my opinion that those carriers subject to the payment of the mileage tax under the provisions of Chapter 14764 would have to pay the Capital Stock Tax, notwithstanding the broad provisions of the exemption set forth in Section 16 of the said Act, but an examination of Chapter 14677 convinces me that the said Act is more of a revenue measure than a police measure. You will note, among other things, that the Act provides that any corporation paying the maximum fee provided for in the Act shall not be required to file any reports whatsoever, as required by the provisions of the Act. The Act also limits to \$10,000 in any one year the amount of money that can be used by the Secretary of State for expenses in carrying out the provisions of the Act, the balance of the money collected to be paid into the State Treasury to be used for such purposes as the Legislature may determine.

It is therefore my opinion that Section 16 of Chapter 14764 in the original Act and as amended by Chapter 18026, Laws of Florida, Acts of 1937, exempts those carriers who pay the mileage tax, provided for in said Section, from paying the Capital Stock Tax provided for in Chapter 14677, Laws of Florida, Acts of 1931.

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July 1, 1938.

CHARITABLE INSTITUTIONS—RENTAL PROPERTY NOT EXEMPT

Dear Sir:

I acknowledge receipt of your letter of recent date in which you state:

"I transmit herewith copy of letter received from Honorable A. H. St. John, Tax Assessor, Duval County, to which is attached a Petition for taxation exemption on property belonging to the Daniel Memorial Home for Children.

"After examining this Petition and the Brief submitted in support thereof will you kindly advise me in the premises."

I have examined with care the brief submitted in support of the petition for exemption filed by two able and distinguished members of the Jacksonville Bar.

Section 1 of Article IX of the Constitution of Florida requires that

"All property shall be assessed for taxation * * * excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes."

Section 16 of Article XVI provides:

"The property of all corporations except the property of a corporation which shall construct a ship or barge canal through the peninsula of Florida, if the Legislature should so enact, whether heretofore or hereafter incorporated, shall be subject to taxation unless such property be held and used exclusively for religious, scientific, municipal, educational, literary, or charitable purposes."

Section 897, C. G. L., sub-paragraph 3, provides that the following property shall be exempt from taxation:

"Such property of educational, literary, benevolent, charitable and scientific institutions within this State as shall be actually occupied and used by them solely for the purposes for which they have been or may be organized, but property of such institutions which is rented wholly or in part and the rents, issues and profits only used by such institutions shall not be exempt from taxation nor shall any property held by them as an investment or for speculation be exempt from taxation."

The above statute relating to exemptions was in effect at the time of the introduction of House Bill No. 301 (Chapter 18302, Laws of Florida, Acts of 1937), which said bill later became a law.

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Chapter 18302 provided for the exemption of the real estate of every religious or charitable institution in the State of Florida engaged in the support, maintenance or care of orphan or dependent children. Section 2 of the Act is as follows:

"The provisions of this Act shall extend to any property owned in any county of the State of Florida by such institutions, whether improved or unimproved, not used for rental purposes; provided that nothing in this Act shall be construed to modify or repeal the provisions of law now exempting all property of such institutions within this State from taxation when actually occupied and used by them solely for the purposes for which they have been or may be organized."

The question involved in the petition for exemption filed by the Board of Trustees of the Daniel Memorial Home for Children is whether or not property owned by the institution and being rented, the income of which is used by the petitioner wholly for the purposes of the organization is exempt from taxation under the provisions of Chapter 18302.

It is contended in the brief submitted that the words in Section 2 "not used for rental purposes" should be regarded as meaning "whether or not it is used for rental purposes," it being the contention of the petitioner that unless this construction is given there was no purpose in passing the Act, as the property would be exempt under the general law. I cannot agree with this conclusion. It is the rule of statutory construction that words used in an act must be given the meaning usually attributable to them. To write in the words "whether or not" instead of the negative words used would give just the opposite meaning to the words in question.

Under the Constitution and laws in effect at the time of the introduction of this Act only the property that was actually occupied and used solely for the purposes for which the institution was organized was exempt from taxation. Chapter 18302 makes all property of the institution exempt from taxation insofar as it is not qualified by Section 2, which provides that the Act shall extend to any property owned in any county of the State, whether improved or unimproved, not used for rental purposes.

In the case of *Amos vs. Jacksonville Realty and Mortgage Company*, 81 So. 524, the Supreme Court of Florida held:

"Under the Constitution and laws of Florida the property of an educational institution shall be exempt from taxation in this State (that) shall be actually occupied and used by such educational institution solely for the purposes for which such institution may have been organized or conducted, but property of such

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institutions which is rented wholly or in part, shall not be exempt from taxation."

In the case of *Rast vs. Hulvey*, 80 So. 750, the Supreme Court said:

"Under the statute in this State all real and personal property not expressly exempted therefrom shall be subject to taxation * * *; therefore, in order to exempt any person or institution from taxation the statute under which the exemption is granted should be strictly construed and unless the person or institution comes clearly within the terms of the statutory provision granting immunity the property is subject to taxation."

And again in the case of *Steuart vs. State*, 161 So. 378, the Court said:

"Tax exemptions, whether stated in the Constitution or statutes, are to be construed against the claimant and in favor of the taxing power in cases of doubt."

Under Section 16 of Article XVI the Legislature is authorized to exempt only property held and used exclusively for charitable purposes. *Cooley on Taxation*, Vol. 2, Section 686, states the rule to be that if the statute makes the exemption dependent upon the use of the property, then the exception does not apply to property rented out to others by the exempt association or to other property held or used by it merely as a source of revenue. There are numerous cases cited by the authority to bear out the rule. And again in *Cooley*, Section 741, we find:

"If use is the test there is no exemption or only a limited exemption where part of a building owned by a charitable institution is used for commercial purposes, especially where exemption is limited to property used exclusively for charitable purposes. If power of the legislature to exempt is limited to property used exclusively for charitable purposes it cannot exempt the property of a secret association whose funds are devoted not only to benefits to the members but also to social purposes."

By discussing and quoting from *Cooley* I do not mean to pass upon the constitutionality of Chapter 18302, Laws of Florida, Acts of 1937, but only to show the limited field for exemption by the legislature of charitable institutions.

Historically, the exemption of rental property used by charitable and educational institutions was found objectionable because it admitted these institutions as landlords to compete with other landlords whose property was not tax exempt.

I have given careful consideration to Section 1 of Chapter 18302 but do not believe that the Act, considered as a whole, bearing in mind that

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the courts require a strict construction in favor of the State of an exemption statute, would justify holding that the property in question is exempt from taxation if used for rental purposes.

The construction placed upon Section 2 does not make the Act meaningless, for, to the extent noted in Section 1, whenever the property of the institution is unimproved, or, if improved, brings in no rental revenue, the institution is excepted from the payment of a tax thereon. Prior to this Act such property was liable to taxation.

I have examined the original records of the Legislature deposited with the Secretary of State to see if any amendments were offered, rejected or otherwise, that would lead to a different construction of this Act, but do not find that the Act was changed after its introduction into the Legislature.

According to the views expressed above, it is my opinion that the property of the institution used for rental purposes is not exempt from taxation.

July 20, 1938.

FIBER BOARD FACTORY EXEMPT UNDER SECTION 12, ARTICLE IX

Dear Sir:

I acknowledge receipt of your letter of July 19, 1938, in which you state:

"Attached hereto is letter from Honorable A. H. St. John, Tax Assessor of Duval County, requesting an interpretation of Section 12 of Article 9 of the Constitution as applied to a factory manufacturing fibre board, and other products from gypsum.

"After reading the attached correspondence will you kindly advise me in the premises."

In the letter from the Tax Assessor of Duval County it is stated that the United States Gypsum Company purposes to manufacture a board that is bound with paper binder and has a core composed of a mixture of gypsum plaster highly impregnated with wood fibre. My opinion is asked as to whether or not an industrial plant engaged primarily in the manufacture of such products comes within the terms of Section 12, Article IX of the Constitution.

The constitutional provision under discussion, Section 12 of Article IX as amended, adopted at the General Election of November 12, 1930, provides for the exemption of industrial plants, among others, engaged primarily in the manufacture of fiber board.

The Supreme Court of this State held in the case of Jacksonville Can Company, 151 So. 488, that a strict construction should be used

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in construing this constitutional amendment and that a concern engaged primarily in the manufacture of a product containing a mixture of steel and tin, being a container to hold food, was exempt from taxation under said Article as being a concern primarily engaged in the manufacture of steel vessels.

Recently the Supreme Court, in the case of *City of Jacksonville vs. Glidden Company*, 169 So. 216, held that a process used by a company engaged in refining crude turpentine was a refiner of oil within the constitutional provision exempting from taxation industrial plants engaged in the refining of sugar and oil.

I am of the opinion that under the provisions of Section 12, Article IX, as construed by the Florida Supreme Court in the two cases above mentioned, that a concern engaged primarily in the manufacture of fiber board as above mentioned would be exempt from taxation within the limits of Section 12, Article IX of the Constitution, as amended.

March 9, 1937.

HOMESTEAD OWNER REQUIRED TO FILE CLAIM

Dear Sir:

I have your letter of recent date in which you inquire whether or not it is the duty of the homestead owner to file the form or other notice with the tax assessor claiming tax exemption on his homestead or whether or not it is the duty of the tax assessor to make the exemption without affirmative action on the part of the homestead owner.

Chapter 17060, Laws of Florida, Acts of 1935, provides a procedure whereby homestead exemptions shall be claimed by the homestead owner. Section 4 sets out a certain form which the Comptroller shall furnish to the assessors of the various counties. Section 5 provides:

"It shall be the duty of each taxpayer who claims said exemption to file one of the said forms, properly filled out and executed, with the assessor, on or before April 1 of each year; and the failure to do so shall constitute a waiver of said exemption for such year; provided, however, that for the year 1935 such claim may be filed on or before July 1, 1935."

Section 8 provides for the examination by the tax assessor of all applications for tax exemptions, and if he finds the applicant entitled to the tax exemption applied for under the law he shall mark the application approved and exemption granted and shall make such entries upon the tax rolls of the county as will allow such exemption to the applicant.

Section 8 also provides that in the event the tax assessor shall disallow the claim, the homestead claimant may appeal to the Board of

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Equalizers; in the event they deny the claim he shall within fifteen days file in the Circuit Court of the county in which the homestead is situated a proceeding against the assessor for a declaratory decree.

It will thus be seen that said Chapter 17060, Laws of Florida, Acts of 1935, places a duty on the part of the homestead owner to take affirmative action in order to get his homestead exempted from taxation.

April 5, 1937.

HOMESTEAD, LOCATED ON LOT 11 EXEMPT

Dear Sir:

I acknowledge receipt of your letter of March 29, 1937, in which you ask whether or not a homestead owner is exempt from taxation under the following statement:

"A owns and resides on Lot 11, Block 2, Merimar Place Unit No. 1. He also owns two lots across the street, described as Lots 3 & 4, Block 2, Guaranty Land Company's Replat of Florida Beach Townsite. A is claiming homestead exemption on all three lots, regardless of the fact that they are separated by a public street (irrevocably dedicated), and regardless of the fact that these lots were all purchased by him knowing that the street in question separated the lots, which lots also lie in two different subdivisions. These lots also lie within an incorporated town limits, and were within town limits when purchased.

"All three lots comprise less than one-half acre."

In the case of *Brandies vs. Perry*, 22 So. 268, the Supreme Court of Florida held that the head of a family is not entitled to claim as a part of his homestead a detached tract of land separated from the homestead by other parcels of land neither owned nor occupied by the owner of the homestead, though such other tract of land be used and cultivated as a part of the homestead and both tracts together do not exceed the constitutional limits as to quantity.

In this case the Court said that the purpose of an exemption was to protect the homestead owner from losing his home and that actual occupation of the property was necessary to constitute such land a homestead. A temporary removal, however, would not cause it to lose its homestead status.

It is my opinion, by the interpretation placed on Article 10 by the Supreme Court of Florida in this case and in other cases, that under the statement of facts given above the only piece of property exempted from taxation would be Lot 11, upon which the owner has his dwelling house.

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May 31, 1937.

**HOMESTEAD EXEMPTIONS—IF DECEASED HUSBAND WAS
NATURALIZED IS WIFE ENTITLED TO***Dear Sir:*

I acknowledge receipt of your letter of May 15, in which you ask the following question:

"In a case where a man and woman who are both aliens but residents of Florida marry and later the husband is naturalized, does his naturalization have the effect of making his wife a citizen and resident of Florida to the extent that she is entitled to the benefit of exemption on her homestead after her husband's death?"

Prior to September 22, 1922, the naturalization laws of the United States (which control citizenship among the states) provided that any woman who married a citizen and who might herself be lawfully naturalized should be deemed a citizen of the United States (see *United States vs. Todd*, 285 Fed. 523); and likewise any alien woman already married to an alien become naturalized by the naturalization of her husband, provided she is eligible to naturalization. See *Kreitz vs. Behrensmeyer*, 17 N. E. 232; 1 R. C. L., Aliens, Section 78.

Section 368, Title 8, U. S. C. A. provides: "Any woman who marries a citizen of the United States after September 22, 1922, or any woman whose husband is naturalized after that date, shall not become a citizen of the United States by reason of such marriage or naturalization; but, if eligible to citizenship, she may be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions: * * *." (Exceptions unnecessary to mention here.)

It will thus be seen that the answer to the above question depends upon the date of the husband's naturalization. If the husband was naturalized prior to September 22, 1922, his wife would become an American citizen under the provisions of the Revised Statutes, Section 1994, if she herself would be entitled to be naturalized under the laws of the United States. If, however, the husband was naturalized after September 22, 1922, under the provisions of the so-called Cable Act, such naturalization would not make her a citizen of the United States.

April 26, 1938.

**HOMESTEAD EXEMPTION—QUESTION FOR COURT
DETERMINATION***Dear Sir:*

I acknowledge receipt of your letter of April 13, in which you state:

"Under Chapter 17060, Acts of 1935, each head of a family is required to file an application to have his homestead exempt

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from taxation and occasionally the application is filed, approved by the Tax Assessor but in making the extension on the tax roll the taxes are extended against the homestead which should have been exempt and occasionally the Tax Assessor denies the application but fails to give notice so that an appeal can be taken to the Board of County Commissioner when sitting as a Board of Equalization.

"In the first case mentioned above can the Tax Assessor certify as errors the taxes extended against a homestead for which application was filed within the time prescribed by the Statute and approved by the Tax Assessor? In the second case what recourse has the taxpayer after having his application for the exemption denied and without receiving notice of such denial does not have the privilege of appealing to the Board of County Commissioners as provided by the Statute?"

It is my opinion that where a homestead exemption application has been filed with the Tax Assessor and approved by the Tax Assessor but the taxes have been extended on the tax roll that the Tax Assessor may certify as errors the taxes extended.

Where a Tax Assessor has denied an application that has been filed for homestead tax exemption but fails to give the notice, which is the appeal to the Board of County Commissioners, sitting as a Board of Equalizers, that in the event the Tax Assessor later determines that the homestead owner was entitled to the exemption, he may also certify as errors the taxes extended against the homestead.

But if the Tax Assessor is still of the opinion that the taxpayer is not entitled to exemption then it is my opinion that the only recourse the taxpayer has is to the Courts. I do not believe any other administrative officer would have the right to strike these taxes from the roll.

July 13, 1938.

HOMESTEAD EXEMPTION—TO WIFE SHOULD BE DENIED

Dear Sir:

I acknowledge receipt of your letter of July 6, in which you enclose a letter from Honorable James M. Owens, Jr., Tax Assessor of Palm Beach County, in which he states:

"I have an application for a Homestead Exemption from Mrs. A, who owns a home in Palm Beach. She claims her citizenship in Florida and expects to file her Intangible Tax Return. Both Mr. and Mrs. A were formerly residents of Indianapolis, Indiana. Mr. A is still a resident of Indianapolis.

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"Would it be proper to allow a Homestead Exemption in this case, where the wife claims citizenship in Florida and the husband citizenship in another State?

"I might add, however, that Mr. A has paid, in the past, a great deal of money in taxes. He has developed some of the most successful subdivisions in Palm Beach and has contributed largely to the growth and development of Palm Beach.

"I would appreciate your giving this matter consideration and advising me."

You ask my opinion as to whether or not the wife, Mrs. A, is entitled to homestead exemption.

Under Section 7 of Article X of the Constitution of Florida, there is exempted from all taxation other than special assessments for benefits to every head of a family who is a citizen of and resides in the State of Florida the homestead as defined in Article X of the Constitution up to a valuation of \$5,000.

In an opinion rendered January 20, 1936, my predecessor, held that a married woman whose husband was a citizen and resident of New York could become a citizen and resident of Florida and if she actually became the head of a family, which family resided with her in her Florida home, she would be entitled to the benefits of the homestead exemption as provided by Section 7 of Article X of the State Constitution. In that opinion the Attorney General said:

"There can only be one head of a family and in case of a husband and wife constituting a family the husband would be the head of the family. If the wife does not reside with her husband in New York and she comes to Florida for the purpose of becoming a citizen and a resident of the State, and therefore of setting up and maintaining a separate and independent residence from that of her husband she may by complying with our laws become a citizen and resident of this State."

It does not appear from the letter of Mr. Owens that Mrs. A lives separate from her husband. It would be my opinion that the residence and citizenship of the wife would be that of her husband and that she would not therefore be the head of a family in Florida.

In the case of Whidden vs. Abbott, 168 So. 253, the Supreme Court of Florida held that to constitute the "head of a family" within the Constitution exempting homesteads from sale under execution, there must be at least two persons who live together in relation of one family and one of them must be the head of that family.

It is therefore my opinion that unless Mrs. A can show that she is the head of the family and a citizen of the State of Florida, homestead exemption should be denied.

EXEMPTIONS

April 7, 1937.

HOSIERY MILL EXEMPT UNDER SECTION 12, ARTICLE IX

Dear Sir:

I have your letter of March 29, in which you inquire whether or not a hosiery manufacturing plant now locating in Florida would be exempt from taxation under Section 12 of Article 9 of the Constitution.

I understand that the hosiery is manufactured by weaving yarns into the finished product.

The constitutional provision under discussion, Section 12 of Article 9, adopted at the General Election of November 4, 1930, provides for the exemption of industrial plants, among others, engaged primarily in the manufacture of fabrics and textiles.

I held in an opinion of December 16, 1932, that a manufacturer of rope using hemp and jute in the manufacture thereof, would be exempt from taxation, according to the terms of the section and article above cited.

I also held in an opinion rendered February 6, 1937, that a manufacturer of shirts made from fabrics and textiles did not come under the provisions, as I did not consider such manufacturer engaged primarily in the manufacture of "fabrics and textiles."

I think, however, that hosiery woven from yarn would come within the intent of the constitutional amendment and be exempt, as apparently the definition of fabric or textile, as given by Funk & Wagnalls New Standard Dictionary and Webster's New International Dictionary, would include hosiery manufactured by weaving from yarn or rayon silks or other material of like nature as fabrics or textiles.

The Supreme Court of this State has held in the case of Jacksonville vs. Continental Can Company that a strict construction should not be used in construing this constitutional amendment.

You will realize, of course, if the taxing authorities wish to take a narrow viewpoint in construing the word fabric and should see fit to test the matter in the courts, I cannot anticipate what the court's final judgment will be.

September 25, 1937.

INDUSTRY PRODUCING WOVEN WIRE SCREEN NOT EXEMPT

Dear Sir:

I acknowledge receipt of your letter of September 22, in which you enclose a letter from Industry Board, Inc., St. Petersburg, Florida, re-

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questing an opinion as to whether or not an industry producing woven wire screen is exempt from taxation under the provisions of Section 12 of Article IX of the Constitution.

Section 12 of Article IX of the Constitution of Florida is as follows:

"For a period of fifteen years from the beginning of operation, all industrial plants which shall be established in this State on or after July 1, 1929, engaged primarily during said period in the manufacture of steel vessels, automobile tires, fabrics and textiles, wood pulp, paper, paper bags, fibre board, automobiles, automobile parts, aircraft, aircraft parts, glass and crockery manufacturers, and the refining of sugar and oils, and including by-products or derivatives incident to the manufacture of any of the above products, shall be exempt from all taxation, except that no exemption which shall become effective by virtue of this amendment shall extend beyond the year 1948."

On the 6th day of February, 1937, the Attorney General advised that in his opinions shirts made from fabrics and textiles would not be exempt under the said amendment.

On the 7th day of April, 1937, in an opinion rendered to you, the Attorney General held that under a broad construction of the constitutional amendment hosiery woven from yarn would come within the intent of the constitutional amendment and be exempt, as apparently the definition of fabric or textile, as given by Funk and Wagnalls' New Standard Dictionary and Webster's New International Dictionary, would include hosiery manufactured by weaving from yarn or rayon silks or other materials of like nature as fabrics or textiles.

Webster's New International Dictionary, Second Edition, Unabridged, defines fabric as something woven or capable of being woven formed by weaving, as cotton or wool or textile fabrics. There is no doubt but that screen wire is fabricated. As a matter of fact, most any building that is built, in its broadest sense, would be considered fabricated. It is my opinion you would have to construe the words "fabrics and textiles" together in order to arrive at the type of fabrics that would be exempt under Section 12 of Article IX, and when this is done, I do not believe that screen wire manufactured or fabricated or woven from wire would be considered as properly coming within the terms "fabrics and textiles."

It is therefore my opinion that an industry producing woven wire screen would not be exempt from taxation under the provisions of Section 12 of Article IX of the Constitution.

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October 5, 1938.

INDUSTRIAL PLANTS EXEMPT UNDER ARTICLE IX, SECTION 12
CONSTITUTION, SHOULD BE ASSESSED FOR
PRIOR DEBT SERVICE*Dear Sir:*

I acknowledge receipt of your letter of September 16, in which you quote from a letter as follows:

"It would appear to me as a matter of equity that, since the Supreme Court has decided that homesteads cannot be exempted from a debt service levy on bonds outstanding prior to November, 1934 and for special assessments for benefits, such as Inland Navigation District, it would necessarily follow that no other Constitutional exemptions could relieve other property such as industrial plants under Article 9, Section 12, of a debt service and special assessments for benefits levy. Therefore, please advise me if the levy should apply against such industrial plants as are covered in Article 9, Section 12 of the Constitution.

"I would greatly appreciate an opinion covering the matter at the earliest possible date."

Section 7 of Article X of the Constitution provides that there shall be exempted from all taxation other than special assessments for benefits the homestead as defined in Article X of the Constitution.

In construing this amendment our Supreme Court said:

"Constitutional amendment exempting from taxation homestead property of less than Five Thousand Dollars (\$5,000) valuation held unconstitutional insofar as it might prohibit levy, assessment and collection of taxes on such homesteads for payment of interest and principal of bonds issued by tax district prior to adoption of amendment until some other adequate fund should be legally substituted for that lost by exemption." *State vs. Port of Palm Beach District*, 164 So. 851.

Our Supreme Court in several other cases held that the homestead exemption amendment did not apply insofar as bonds or debt service which had accrued prior to the adoption of the amendment was concerned. Section 12 of Article IX, which provides that for a period of fifteen years all industrial plants which shall be established in the State on or after July 1, 1929, engaged primarily during said period in the manufacture of steel vessels, etc., shall be exempt from all taxation.

The wording of these two exemption amendments is very similar and it is my opinion that the decisions of the Supreme Court of this

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State relative to the homestead exemption amendment would likewise apply to the industrial exemption amendment.

It is therefore my opinion that industrial plants that are exempted under the provisions of Article IX, Section 12, of the Constitution, should be assessed for debt service that accrued prior to the time that the plant in question was exempted from the payment of current taxes under said amendment.

April 29, 1938.

OFFICERS AND ENLISTED MEN—WHEN NOT ENTITLED TO

Dear Sir:

I acknowledge receipt of your letter of April 29, 1938, in which you state:

"Section 1269 of the Permanent Supplement provides for the exemption of all officers and enlisted men in the United States Army, Navy or Marine Corps during the World War or the Spanish American War who were honorably discharged from the service of the United States.

"I am today in receipt of the enclosed copy of discharge from draft from one of the Tax collectors of the State. He has requested an opinion as to whether or not this discharge from draft could be considered as an honorable discharge so as to entitle * * * to exemption from the occupational license tax as provided in the above mentioned Section.

"I am in receipt of the eligibility rulings of the American Legion of the State of Florida with reference to the holder of a discharge from the draft not being eligible to join the American Legion. I am also in receipt of a letter from the Adjutant General of the War Department, which I am enclosing for your information."

It is my opinion that one who holds only a discharge from the draft is not entitled to the exemption provided for under Section 1269 of the Permanent Supplement.

The certificate of discharge from the draft is the form adopted by the War Department as the proper certificate to be furnished to an inducted man who was not accepted for service upon examination at a military post. Section 1269, Compiled General Laws of 1927, Permanent Supplement, provides for an exemption of those who were *honorably discharged from the service of the United States*.

EXEMPTIONS

October 5, 1938.

RAW MATERIALS USED IN FINISHED PRODUCTS EXEMPT UNDER
SECTION 12, ARTICLE IX, CONSTITUTION*Dear Sir:*

I acknowledge receipt of your letter of September 15, in which you ask my opinion as to whether or not raw materials of an industrial plant which is exempted under the provisions of Section 12 of Article IX of the Constitution is subject to taxes and whether or not finished products of such an exempt plant is subject to taxation.

In the case of the City of Jacksonville vs. Continental Can Company, 151 So., page 488, the Supreme Court of this State had before it for its consideration a case involving the construction of the words "steel vessels"; in that case there was involved an assessment on real property and upon the personal property of the company located upon the particular tract in question. The Court in its opinion held that all of this particular tract was exempt from taxation.

Section 12 of Article IX of the Constitution is as follows:

"For a period of fifteen years from the beginning of operation, all industrial plants which shall be established in this state on or after July 1, 1929, engaged primarily during said period in the manufacture of steel vessels, automobile tires, etc., and the refining of sugar and oils, and including by-products or derivatives incident to the manufacture of any of the above products, shall be exempt from all taxation, except that no exemption which shall become effective by virtue of this amendment shall extend beyond the year 1948.

"The exemption herein authorized shall not apply to real estate owned and used by such industrial plants except the real estate occupied as the location required to house such industrial plants and the buildings and property situated thereon, together with such lands as may be required for warehouses, storage, trackage and shipping facilities and being used for such purposes."

It is my opinion that raw materials brought to an exempt plant for the purpose of being used in the finished product is exempt from taxation.

After a product has been manufactured and is in a completed state, I see no reason why it should be exempt from taxation but should bear the burden that other personal property in the state bears.

EXEMPTIONS

February 6, 1937.

SHIRT FACTORY NOT EXEMPT UNDER SECTION 12, ARTICLE 9,
CONSTITUTION*Dear Sir:*

I acknowledge receipt of your letter of February 2, in which you enclose certain correspondence from Honorable A. H. St. John, relative to the following question: Is a manufacturer of shirts exempt from taxes under Section 12 of Article 9 of the Constitution of Florida?

I have read the brief accompanying your letter contending such factory should be exempted but I do not concur in the conclusions reached by the writer of said brief.

The Constitutional provision under discussion, Section 12 of Article 9, adopted at the General Election of November 4, 1930, provides "for a period of fifteen years from the beginning of operation all industrial plants which shall be established in this State on or after July 1, 1929, engaged primarily during said period in the manufacture of steel vessels, automobile tires, fabrics and textiles * * * and including by-products or derivatives incident to the manufacture of any of the above products, shall be exempt from all taxation, except that no exemption which shall become effective by virtue of this amendment shall extend beyond the year 1948."

Shirts are made from fabrics and textiles but I do not think that the manufacturing of shirts could be considered to be engaging primarily in the manufacture of fabrics and textiles, nor could shirts be properly considered within the spirit of the amendment by-products or derivatives of fabrics and textiles.

It is therefore my opinion that the said amendment would not apply to a proposed shirt factory mentioned in the correspondence.

December 7, 1937.

STEEL VESSELS EXEMPT UNDER SECTION 12, ARTICLE IX OF
THE CONSTITUTION*Dear Sir:*

I acknowledge receipt of your letter of November 20, 1937, in which you ask the following question:

"Will you please advise me if a manufacturer who manufactures small boats, ranging in length from 9 to 16 feet, such boats being of the rowing and motor driven type, made of steel closely welded, would be exempt from taxation as provided by Section 12, Article 9 of the State Constitution."

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Among other things, Section 12 of Article IX exempts for a period of fifteen years all industrial plants which are established in the State subsequent to the first day of July, 1929, engaged in the manufacture of steel vessels.

In the case of *The City of Jacksonville vs. Continental Can Co.*, 151 So. Rep. 488, the Supreme Court of Florida held that metal containers manufactured for holding food products were steel vessels within the constitutional exemption.

In that case the Supreme Court said:

"The term 'vessels' is a general term meaning container; a hollow or concave utensil for holding anything; any structure, especially hollow ones, made to float upon the water for purposes of navigation; a craft for navigation of the water, often one larger than a common row boat, as a war vessel, a passenger vessel."

It is therefore my opinion that such boats as are mentioned in your letter would be exempt from taxation under the terms of Section 12, Article IX of the State Constitution.

SECTION 5
INCOME TAX

March 14, 1938.

STATE EMPLOYEES NOT REQUIRED TO PAY

Dear Sirs:

I acknowledge receipt of your letter of recent date in which you state:

"Will you please inform us if State employees are subject to income tax.

"Some of our people seem to be under the impression that employees of the State of Florida do not have to submit an income tax to the Government.

"Will you please let us hear from you in regard to this matter."

It is my opinion that employees of the State of Florida do not have to pay an income tax to the Federal Government.

I do not know how this question has arisen, since it has been the practice of the Federal Government not to require the payment of the said income tax by State Employees.

You understand, of course, that this opinion has no binding effect whatsoever so far as the Federal Government is concerned.

SECTION 6

INHERITANCE OR ESTATE TAX

June 21, 1938.

ESTATE OF ROGER DEERING, DECEASED, SHOULD BE ASSESSED

Dear Sir:

I observe from the files submitted with your letter of the 18th instant that Mr. Roger Deering, who was a resident of Dade County, Florida, died February 2, 1936. Also that an estate tax was paid to the State of Florida in the total amount, tax and interest, of \$16,563.02, for which your receipt was issued dated October 8, 1937.

I also observe that you are in possession of information that the Northwestern University, the residuary legatee under the decedent's will, had entered into a compromise agreement with the heirs of decedent to pay them an additional \$1,250,000 of the assets of said estate as a compromise settlement between the said residuary legatee and said heirs, in order to avoid a contest of the will of said decedent by said heirs.

I am not advised when the said settlement was effected, or whether it had the approval of the executor of the said estate, and if so, whether the payment was actually made, nor am I advised as to the terms and conditions of the agreement for said compromise settlement.

I have no information as to the charter powers of the residuary legatee to dispose of its money or property by gift, but such power would be unusual as to such institutions. As a rule, they have power to receive, but not to make gifts. Whether they have such power, it is hardly likely that they would exercise the same to the extent of giving away \$1,250,000.

It is to be presumed, therefore, that if it is true that the residuary legatee compromised a claim of the heirs against the estate of the decedent by paying them the amount stated, it must have been for the reason that it regarded its claim to the residue of said estate as doubtful under the will, and was unwilling to contest the claim of the heirs thereto.

I am not advised whether the reported compromise settlement was made prior or subsequent to the return made by the executor for estate tax purposes. If it was made prior, the failure to report same and pay the tax on the amount of such settlement might amount to a legal fraud on the government. If the reported settlement was withheld until after the return and payment of the tax for the purpose of avoiding the payment of the tax on that amount, that also would amount to a fraud on the government.

The rule of law seems to be that charitable bequests to be deductible in determining net estates subject to the estate tax must be reasonably

INHERITANCE OR ESTATE TAX

certain and determinable from facts existing at the time of the testator's death. By Item numbered Seventeenth of the Codicil to the Last Will and Testament of the decedent, the executor is authorized and empowered to compromise and compound claims in favor of or against the estate of the decedent upon such terms and conditions as the executor should deem for the best interest of said estate, and the decision of the executor is made binding and conclusive on all parties interested in said estate.

If the executor has the power to compromise and compound claims to the extent of the reported settlement made between the residuary legatee and the heirs, he would have compromised and compounded claims to the extent of exhausting the assets of said estate. To this extent the amount of the residuary bequest could hardly be said to be definite or certain at the time of the death of the decedent.

It seems to me that the facts and circumstances fully justify the reopening of this case for further investigation, and that the executor be required to disclose the conditions of the reported compromise settlement, and the reasons and consideration therefor, and that he also be required to establish his right to any claimed exemption and the extent thereof in arriving at the net value of said estate for estate tax purposes.

The rule of law in Florida places the burden on the taxpayer to establish his right to a claimed tax exemption, and that rule should be applied in this case.

If the executor fails to make it clearly appear that the estate is legally entitled to the deductions claimed in arriving at the net estate, then in such event I suggest that the claimed deductions be disallowed, and an estate tax assessed and levied accordingly.

SECTION 7

INTANGIBLE PERSONAL PROPERTY TAX

July 11, 1938.

CERTAIN TRUSTS NOT SUBJECT TO

Dear Sir:

I acknowledge receipt of your letter of recent date in which you state:

"Herewith is file of correspondence from Hon. J. N. Lummus, Jr., Tax Assessor Dade County, relative to certain trusts being subject to an assesment of intangible taxes.

"From the correspondence it appears that there are differences of opinion concerning this matter, and, I therefore, request your opinion so that the Tax Assessor may be governed accordingly."

From the correspondence and other data furnished me, you request my opinion based on the following facts. Charles Deering died as a resident of Dade County, Florida, the 5th day of February, 1927, and by his Last Will, probated in Dade County, appointed James Deering and Richard F. Howe as Executors and Trustees. James Deering predeceased Charles Deering and Richard Howe as Executor took possession of the entire estate. After the administration of the estate had been completed, possession of the property was taken by Howe as Trustee. Later Howe resigned and Howell B. Erminger, Jr., and William Deering Howe were appointed and confirmed by the Circuit Court of Dade County as successor Trustees, each of the two successor Trustees being non-residents of the State of Florida. The decree of the Circuit Court in this and in a supplemental case required the successor Trustees to make annual accountings to the Court and the Court retained jurisdiction of the subject matter of the cause and of the parties thereto.

There are three beneficiaries under the trust, being residents respectively of the States of Florida, Illinois and Massachusetts. No intangible personal property of the trust has ever been held in the State of Florida, all the securities being lodged for safekeeping with the Bankers Trust Company in New York City. No question arises as to the intangibles having a business situs in the State of Florida.

My opinion is requested as to whether under the facts above stated the intangible personal property, title to which is vested in the Trustees under appointment from a Florida Court, and which property is not located within the State of Florida, has a situs for the purpose of taxation within the State of Florida.

Were it not for the fact that the Circuit Court of Dade County, in its decree, retained jurisdiction of the subject matter for the purpose

INTANGIBLE PERSONAL PROPERTY TAX

of requiring an annual accounting, etc., the question would come squarely within the point decided by the Florida Supreme Court in the case of *State et al. vs. Beardsley*, 82 So. Rep. 794. In that case the Florida Supreme Court held that a trustee, for the purpose of taxation, is the owner of the property and is taxable at his domicile, which may be different from the domicile of the decedent, and while the property held by an administrator or executor is taxable at the domicile of the deceased, the property held by a trustee, although held by him under a will, is taxable at the domicile of the trustee.

In the opinion in the *Beardsley Case* the Supreme Court said:

"It is essential to the power of taxation that either the owner of personal property be a resident or the property be situated within the district attempting to exercise the power to tax. It is shown by the Bill that the appellees are non-residents of St. Johns County and it is clearly shown by the evidence that the property is not only presumptively, but actually, in another state; if we consider the word 'trustees' as merely descriptive personae, there is certainly no right to assess the property in St. Johns County."

Further on in the opinion the Court said:

"It was urged in argument by one of counsel for appellants that, the executor and trustee being appointed by the court of St. Johns county, and that the trust was to be administered, if necessary, for the benefit of hotels and a railway in this state, it was taxable in this State. We think this is fully answered by the Supreme Court of Maine, where they said:

"'When the estate of a Maine decedent has been fully administered, and has vested in non-resident testamentary trustees, and the property has been removed by them from the state, they cannot be directly taxed in this state for such property, although they have qualified as such trustees in the Maine probate court, which confirmed their appointment by the decedent, and although the beneficiaries under the trust reside in this state.' *City of Augusta vs. Kimball*, 91 Me. 605, 40 Atl. 666, 41 L. R. A. 475."

The Supreme Court of the United States recently passed upon a question very similar to this in the case of *Safe Deposit & Trust Company of Baltimore vs. Commonwealth of Virginia*, 280 U. S. 83, involving the following facts: One Kellam, residing and domiciled in Virginia, delivered to the Safe Deposit & Trust Company of Baltimore stocks and bonds valued at \$50,000, with instructions to collect the income and to accumulate the net income for the benefit of his two sons, these to accumulate until the two sons arrived at the years of twenty-five, each,

INTANGIBLE PERSONAL PROPERTY TAX

when one-half the principal and accumulations was to be paid. The administration of the estate of Kellam was had in Virginia. The trust company held the securities in Baltimore, Maryland, and paid the taxes demanded by the City and State there. The Virginia Supreme Court sustained an assessment made in Virginia and the case was appealed to the United States Supreme Court. That Court held:

"Manifestly, the securities are subject to taxation in Maryland where they are in the actual possession of the trust company—holder of the legal title. That they are property within Maryland is not questioned. Also, nobody within Virginia has present right to their control or possession, or to receive income therefrom, or to cause them to be brought physically within her borders. They have no legal situs for taxation in Virginia unless the legal fiction *mobilia sequuntur personam* is applicable and controlling."

"Ordinarily this court recognizes that the fiction of *mobilia sequuntur personam* may be applied in order to determine the situs of intangible property for taxation. *Blodgett vs. Silberman*, 277 U. S. 1. But the general rule must yield to established fact of legal ownership, actual presence and control elsewhere and ought not to be applied if so to do would result in inescapable and patent injustices whether through double taxation, or otherwise. Here, where the possessor of the legal title holds the securities in Maryland, thus giving them a permanent situs for lawful taxation there, and no person in Virginia has present right to their enjoyment or power to remove them, the fiction must be disregarded."

The Court further in that opinion said:

"Here we must decide whether intangibles—stocks, bonds—in the hands of the holder of the legal title with definite taxable situs at its residence, not subject to change by the equitable owner, may be taxed at the latter's domicile in another state.

We think not."

I have read carefully the many decisions of courts of last resort furnished me by the briefs of counsel and in addition other decisions involving this question. I do not deem it necessary to mention or elaborate these decisions.

It is my opinion that under the facts above set forth the State of Florida does not have jurisdiction to assess the intangibles in question.

INTANGIBLE PERSONAL PROPERTY TAX

January 29, 1937.

COMPTROLLER NOT AUTHORIZED TO RELEASE LANDS FROM
LIEN UNDER CHAPTER 15789, LAWS OF FLORIDA,
ACTS OF 1931*Dear Sir:*

I acknowledge receipt of your letter of January 27, 1937, in which you ask the following question:

"Under Section 19 of the Intangible Personal Property Tax Act of 1931, an assessment for intangible taxes becomes a lien on both the real estate and personal property belonging to the taxpayer. Under the regulations prescribed by me as Comptroller, when the tax becomes delinquent the collector lists it in the office of the clerk of the court where it becomes of record and is a lien against the real estate belonging to that taxpayer.

"I am now requested by the City of Miami to release from such lien certain lands which have been acquired by the City through tax foreclosure proceedings and will appreciate your advising me if there is any statute under which I have authority to arbitrarily release lands under circumstances of this kind."

It is my opinion that you have no authority to release lands under the circumstances set forth in the above question from the lien provided for under Chapter 15789, Laws of Florida, 1931, known as the Intangible Personal Property Taxation Act of 1931.

April 8, 1937.

INVALID ASSESSMENT CHAPTER 15789

Dear Sir:

I have your letter of April 15, 1937, attaching correspondence * * *, with reference to the assessment of intangible personal property taxes by the Tax Assessor of Dade County.

From the attached correspondence I gathered the following facts: The bank was the trustee under a mortgage indenture which secured bearer bonds in the original sum of \$100,000. The bonds were not registered and the bank had neither interest in the bonds nor control over them, it being the duty of the bank to pay the interest coupons thereon as they matured out of money provided for that purpose or to foreclose the mortgage in the event of default on behalf of the mortgage-holders. The County Tax Assessor assessed an intangible tax against the bank for the amount of the bonds outstanding, under Section 8 of Chapter 15789, Acts of 1931, which provides:

INTANGIBLE PERSONAL PROPERTY TAX

"It is hereby made the duty of every person, firm or corporation owning or having either control, management, or custody of intangible personal property in this State which is subject to taxation under the laws of Florida, including trustees, executors, administrators, receivers and all other fiduciaries to return the same for taxation to the county assessor of taxes in the proper county on or before the first day of April of each and every year, giving the character and description of such intangible personal property."

It is my opinion that under the facts above given the assessment is invalid. I do not think that bearer bonds which pass by delivery would be under the control or custody in any way of the trustees. After an original issue is sold these bonds are generally scattered all over the United States. It is true that much revenue is lost by the failure of the ones who own the bonds, when living in this State, to return said bonds for taxation but this is not a matter over which the administrative and taxing officials have any control.

April 8, 1938.

**OBLIGATIONS INSURED BY FEDERAL HOUSING ADMINISTRATION
AND HOME OWNERS LOAN CORPORATION MORTGAGES
OR BONDS SUBJECT TO**

Dear Sir:

I acknowledge receipt of your letter of recent date in which you state:

"Will you please advise me if notes and other obligations insured by the Federal Housing Administration and also Home Owner's Loan Corporation mortgages or bonds are subject to taxation under the 1931 Intangible Personal Property Taxation Act."

Title 12, U. S. C. A., Section 1463, specifically provides that the Home Owners Loan Corporation bonds are not subject to state taxation. This would also apply, in my opinion, to mortgages.

It is my opinion that notes and other obligations held by banks and other mortgagees or obligees are still subject to taxation, though insured by the Federal Housing Administration.

July 13, 1938.

**RINGLING ESTATE NOT SUBJECT TO—FORMER ASSESSMENTS
AGAINST RINGLING SHOULD NOT BE CANCELLED**

Dear Sir:

I acknowledge receipt of your letter of recent date in which you enclose a letter from Honorable J. Paul Gaines, Assessor of Taxes, Sarasota County, Florida.

INTANGIBLE PERSONAL PROPERTY TAX

In his letter Mr. Gaines states:

"The appraisers who were appointed by the Court to appraise the assets of John Ringling, deceased, have filed their appraisal with the Probate Court in this County, and among other things, the appraisal shows Class "A" Intangible Property to the value of \$18,851,258.72. This figure includes an item of 1000 shares of stock of the Rembrandt Corporation, valued at \$11,245,305.00.

"The Rembrandt Corporation owns all of the tangible personal property now housed in the Art Museum, and so far as known by the writer, it does not own anything else. Now what I want to know is: since all of the personal property now housed in the Museum, and the Museum itself is given to the State, under the terms of the will of Mr. Ringling, would the above item of \$11,245,305.00 be subject to assessment under the Intangible Law? If so, should I also back assess this property for the years of 1935, 1936 and 1937. You will possibly recall that the Supreme Court held that the personal property housed in the Museum was not assessable.

"John Ringling has been assessed for Intangible property ever since the Law was passed, but his assessments now seem to be only a fraction of what they should have been. No Intangible taxes have ever been paid by him or the executors of his estate. Can the former assessments made against him be cancelled for the past three years and new assessments be made against the executors of his estate, or should these old assessments stand and amended return be filed by the executors for the difference between what was assessed and what should have been assessed? In case the executors do not file amended returns for the last three years, please instruct me how to proceed to make valid assessments for those three years as well as the current year."

The Supreme Court of Florida, in the case of Strohmayer vs Rembrandt, 168 So. 242, held the property of the Rembrandt Corporation not subject to taxation but the said property is exempt under the provisions of Section 16 of Article XVI of the Constitution, said property being property used for an educational purpose. This being true, I do not think that the Ringling Estate would be subject to an intangible assessment because an item is listed including 1000 shares of stock of the Rembrandt Corporation valued at \$11,245,305. If the Tax Assessor has discovered property that has escaped taxation for the past three years, he is authorized on his current roll to assess the property for the past three years, making the assessment against the executors of the Estate.

I do not think the former assessments made against Ringling should be cancelled.

INTANGIBLE PERSONAL PROPERTY TAX

April 8, 1938.

TAX ASSESSOR SHOULD CERTIFY ASSESSMENT ERRONEOUS

Dear Sir:

I acknowledge receipt of your letter of recent date in which you state:

"I am attaching hereto a file regarding an assessment on intangibles owned at one time by the above named estate. You will note from the file that the Honorable Chas. A. Wilcox, Tax Assessor of Pinellas County, was informed of the distribution of the assets and asked not to make an assessment for the year 1937. The Tax Assessor has taken the position that inasmuch as the estate had not been closed in the office of the County Judge that it was still liable for assessment even though the assets had been distributed. I would appreciate your advice on the best method of handling this matter."

I have read the correspondence attached to your request for an opinion in the above entitled matter. Apparently the Tax Assessor was of the opinion that the estate still held the intangibles in question at the time the assessment was made. It developed, however, that prior to the assessment date the intangibles had been distributed to non-resident beneficiaries. The assessment was therefore illegal.

It is my opinion that the Tax Assessor should certify to the Tax Collector that the assessment is erroneous and that the Tax Collector should take credit on his Errors and Insolvency List for this assessment.

May 28, 1938.

TRUSTS—HELD OUTSIDE OF STATE SUBJECT TO TAXATION

Dear Sir:

I acknowledge receipt of your letter of recent date in which you state:

"Will you please give me your interpretation of the Intangible Personal Property Taxation Act as applied to the following circumstances and conditions:

"First, a citizen of Florida establishes an irrevocable trust for the benefit of his wife at his death. The trust fund consists of securities which have never been in the State of Florida and the trustee is a non-resident of the State of Florida.

"Second, a citizen of Florida establishes a revocable trust for the benefit of himself. The securities comprising this trust never having been in the State of Florida and the trustee being a non-resident.

INTANGIBLE PERSONAL PROPERTY TAX

"In the first case, is the widow subject to an intangible tax and if so should the tax be based upon the amount of the trust fund or only upon the amount of the income from such a fund and in the second case is the citizen of Florida subject to an intangible tax on any part of such trust fund?"

My answer to the first question is that the State of Florida has no right to tax this fund under the Intangible Tax Act. Nor can the income from this fund be taxed as this would be in effect an income tax contrary to the Constitution of Florida.

The case of Safe Deposit & Trust Company of Baltimore vs. Commonwealth of Virginia, 280 U. S. 83, involved the following facts: One Kellam, residing and domiciled in Virginia, delivered to the Safe Deposit & Trust Company of Baltimore stocks and bonds valued at \$50,000, with instructions to collect the income and to accumulate the net income for the benefit of his two sons, these to accumulate until the two sons arrived at the years of twenty-five, each, when one-half the principal and accumulations was to be paid. The administration of the estate of Kellam was had in Virginia. The trust company held the securities in Baltimore, Maryland, and paid the taxes demanded by the City and State there. The Virginia Supreme Court sustained an assessment made in Virginia and the case was appealed to the United States Supreme Court, and that Court held:

"Manifestly, the securities are subject to taxation in Maryland where they are in the actual possession of the trust company—holder of the legal title. That they are property within Maryland is not questioned. Also, nobody within Virginia has present right to their control or possession, or to receive income therefrom, or to cause them to be brought physically within her borders. They have no legal situs for taxation in Virginia unless the legal fiction *mobilia sequuntur personam* is applicable and controlling."

"Ordinarily this court recognizes that the fiction of *mobilia sequuntur personam* may be applied in order to determine the situs of intangible personal property for taxation. *Blodgett vs. Silberman*, 277 U. S. 1. But the general rule must yield to established fact of legal ownership, actual presence and control elsewhere and ought not to be applied if so to do would result in inescapable and patent injustice whether through double taxation, or otherwise. Here, where the possessor of the legal title holds the securities in Maryland, thus giving them a permanent situs for lawful taxation there, and no person in Virginia has present right to their enjoyment or power to remove them, the fiction must be disregarded."

INTANGIBLE PERSONAL PROPERTY TAX

The Court further in that opinion said:

"Here we must decide whether intangibles—stocks, bonds—in the hands of the holder of the legal title with definite taxable situs at its residence, not subject to change by the equitable owner, may be taxed at the latter's domicile in another state. We think not."

The Court quoted with approval the case of *Fidelity & C. Trust Co. vs. Louisville*, 245 U. S. 54, which sustained a tax laid at the domicile of the legal owner:

"He had full power to control the deposits in St. Louis banks and might have brought the entire fund within Kentucky's jurisdiction. In *Blodgett vs. Silberman*, 277 U. S. L., the decedent—a resident of Connecticut—had control and present right to all benefits arising from the property. The legal title was not held by another with the duty to retain possession, as in the present cause."

In a concurring opinion in this case, Mr. Justice Stone said:

"But the question whether the 14th Amendment forbids a tax on the beneficiaries, in Virginia, where they are domiciled, measured by their equitable interests, seems to me not to be presented by the record and so under the settled rule of decision of this court, ought not now to be decided. * * * No attempt was made by Virginia to tax the equitable interests of the beneficiaries of the trust. * * *. In the face of the present record, we are not required to speculate how far a tax, forbidden because assessed upon property beyond the jurisdiction, may be upheld because it may be passed on to the beneficiaries in Virginia and the equitable interests thus reached by indirection.

"If the question were here, I would not be prepared to go so far as to say that the equitable rights in personam of the beneficiaries of the trust might not have been taxed at the place of their domicile quite as much as a debt secured by a mortgage on land in another jurisdiction, notwithstanding the fact that the land is also taxed at its situs."

My answer to the second question is where a revocable trust is established for the benefit of the man establishing the said trust, though the securities are outside the State of Florida, they may be taxed in Florida.

There are four primary views concerning the situs for taxation of negotiable public obligations: One fixes this at the domicile of the owner; another at the debtor's domicile; a third at the place where the instru-

INTANGIBLE PERSONAL PROPERTY TAX

ments are found—physically present; and the fourth within the jurisdiction where the owner has caused them to become an integral part of a localized business. In the case of *Farmers Loan & Trust Co. vs. Minnesota*, 280 U. S. 204, the United States Supreme Court said:

"We have determined that in general intangibles may be properly taxed at the domicile of their owner and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles."

This Court also in this case recognized the principle that choses in action may acquire situs for taxation at places other than the domicile of their owner, if they have become integral parts of some local business.

There are many conflicting cases relative to the situs of intangibles for the purpose of taxation, but I believe that the better rule is that where a citizen in this State establishes a trust which he can revoke or control and that the securities involved in this trust are placed with trustees outside the State of Florida, that they are subject to taxation under the Intangible Tax Laws of this State.

March 20, 1937.

TRUST ESTATES—WHERE THE CORPUS OF THE ESTATE BELONGS
TO ELEEMOSYNARY INSTITUTIONS BUT LIFE INCOME IS
RESERVED OR WILLED TO INDIVIDUALS.—SUCH INCOME
SHOULD BE RETURNED FOR TAXATION.—CHAPTER
15789, LAWS OF FLORIDA, ACTS OF 1931.

Dear Sir:

I have your letter of March 10, 1937, in which you request my opinion on the following statement of facts:

"There are in the State certain banks who have trust accounts under wills, wherein they were named trustee to hold certain securities and properties for the benefit of eleemosynary institutions. In some instances the trust provides for a part of the income to individuals during their respective lives. The individuals, however, acquired no interest whatever in the corpus or principal of the trust account, it being in a perpetual trust, the income from which is to be used by the churches, hospitals, schools and charitable organizations.

"Will you please advise me as to whether or not such banks should file an intangible tax return covering the entire holdings mentioned above or such portion of the whole sufficient to produce the income required for the individual beneficiaries; or

INTANGIBLE PERSONAL PROPERTY TAX

whether or not due to the fact that the entire property is held for the benefit of charitable organizations is it taxable."

Section 3 of Chapter 15789, Laws of Florida, 1931, provides that "intangible personal property belonging to * * * and or any religious, charitable, benevolent or educational association shall be exempt from taxation." It is clear, therefore, that the income derived from the securities held in trust which would go or be used for the benefit of the eleemosynary institutions above mentioned is, under the Act, exempt from taxation. It is my opinion, however, that where the income is used for purposes other than that held exempt under the Act, it is subject to taxation.

It is therefore my opinion that the securities, or so much thereof as is necessary to produce the income required for the individual beneficiaries, should be returned for taxation.

SECTION 8

LICENSE TAX

July 9, 1938.

MOTOR VEHICLES—ASPHALT SPREADERS AS SUCH SUBJECT TO

Dear Sir:

This is in reply to your letter of June 29th in which you state that you have reached the conclusion that asphalt spreaders are motor vehicles within the provisions of the licensing statutes. Along with your letter you send specifications and pictures of the asphalt spreaders involved. The fact seems to be that asphalt spreaders are standard trucks with asphalt spreading equipment mounted on the chassis.

Subsection 14 of Section 1285, Compiled General Laws of Florida, Permanent Supplement, provides as follows:

"The State motor vehicle commissioner shall have authority to determine the classification of, and the amount of tax due on any motor vehicle required to be registered under the laws of Florida, and shall have authority and power to fix, determine and assess the amount of registration or re-registration fees and taxes to be paid for registration, re-registration and license thereof and his determination when made and certified to in writing shall be prima facie evidence of the validity, regularity and propriety thereof and of the *liability of the motor vehicles involved therein to classification and tax* so determined, fixed and assessed. No such determination when made by the State motor vehicle commissioner shall be disregarded or set aside in any court, except when clearly shown to be unwarranted in law or in fact."

In view of the above statutory provisions it is my opinion that your determination that asphalt spreaders are subject to classification and tax would not be disturbed by the courts since there are sufficient facts upon which your determination is predicated.

October 20, 1937.

"FOR HIRE" ON TRUCKS TRANSPORTING CITRUS FRUIT NOT REQUIRED

Dear Sir:

This is in reply to your letter of October 19th in which you state the following:

"I am in receipt of communication from * * * which has reference to his hauling citrus fruits under contract from the packing house at Elfers, Florida, to points out of the State of

LICENSE TAX

Florida, namely, the A. & P. Grocery Store, in Atlanta, Georgia, also other stores located in the state of Virginia."

There appear to be two conflicting statutory provisions relating to the exemption of motor vehicles used for the transportation of agricultural and horticultural products. Section 1280, Compiled General Laws of Florida, 1927, reads in part as follows:

"Provided, that motor vehicles temporarily used by farmers for the transportation of agricultural or horticultural products from farms or groves to packing houses or to points of shipment by transportation companies shall not be held to be operating for hire;"

Section 1285, Compiled General Laws of Florida, Supplement, reads in part as follows:

"Provided, however, that vehicles used in the transportation of horticultural and/or agricultural products or used in the transportation of horticultural or agricultural supplies direct to the growers or consumers of said supplies or to associations of said growers and consumers shall not be deemed 'For Hire' vehicles within the terms of this Act."

It may readily be seen that the last statutory provision hereinabove set forth merely enlarges the exemption provided for in the first statutory provision. In view of the fact that the last statutory provision was enacted by the Legislature of 1933 and the first statutory provision was enacted by the Legislature of 1925, the provision last above set forth must, in the event of a conflict between the two, prevail.

It is therefore my opinion that under that portion of Section 1285, Compiled General Laws, Supplement, it is not necessary for one transporting citrus fruits, which are certainly agricultural or horticultural products, to register the vehicles so used as "For Hire" vehicles.

December 23, 1937.

ISSUANCE OF "C" TAGS ON SEMI-ANNUAL BASIS. AUTHORIZED
BY CHAPTERS 16084—16085

Dear Sir:

I am in receipt of your letter of December 22nd, enclosing copy of letter from * * * in which they state they are operating motor busses under a certificate of public convenience and necessity issued by the City of Miami, which serve exclusively the City of Miami and the interurban municipalities on Class "C" tags purchased on an annual basis; and further stating that it is desirable and necessary to add approximately fifty spare, or extra busses to take care of the excess transporta-

LICENSE TAX

tion during the peak or rush seasons, and inquiring if it could legally be granted semi-annual tags for the extra busses, as provided for under Chapter 16084, Laws of Florida, 1933. In response to the inquiry, I would state that the pertinent provision of this law is as follows:

"Such registration shall be renewed annually and in the same manner and upon the payment of the same fee as provided for in the original registration, such renewal to take effect on the first day of January of each year; provided, however, *that auto transportation companies holding Certificates of Public Convenience and Necessity* may register semi-annually the commercial motor vehicles used by them under such certificates in their business and no registration or license shall be required to be paid during such semi-annual period as the same may not be registered and in use. The operation of any motor vehicle after the month of February, without having attached thereto a license tag for the current year shall subject the operator thereof to arrest and punishment as provided by law for the operation of a motor vehicle without proper license; but this paragraph shall not apply to motor vehicles which were not liable to registration or re-registration on January 1st, of such year."

You will note that the language above quoted does not confine the certificate spoken of to a certificate from the State Railroad Commission, but is broad enough to include certificates from the Interstate Commerce Commission and from municipalities. It is, therefore, my opinion, if * * * has a Certificate of Public Convenience and necessity from the city of Miami to operate motor busses in and about that city, that you may issue to said company semi-annual tags for the extra busses, as provided for under Chapter 16084 and 16085, Laws of Florida, 1933.

February 3, 1937.

NON-RESIDENT OWNER EXEMPT

Dear Sir:

You request my opinion concerning substantially the following statement of facts:

There is an elderly couple wintering in Clearwater, Florida, neither of whom is able to drive, by reason of advanced age and infirmities. They own a car which has a Tennessee license. They are located within a few blocks of the place of employment of their son, whose home is several miles distant but he divides his time between the two homes. On occasions the son drives the car when attending to matters for his parents and occasionally drives the car for his own use. The question to be determined is whether or not under Section 1285 (17), Compiled General

LICENSE TAX

Laws of Florida, Supplement, this automobile should be registered and licensed in Florida.

The intent of the Legislature was to require non-residents who accept any employment or engage in any trade, profession or occupation in this State to pay a license tax for the privilege of operating their motor vehicles on our highways. Each case should be investigated and determined in the light of this legislative intent. If the evidence shows that the title to the automobile is placed in the name of a non-resident who is not employed as a subterfuge for avoiding the payment of a license tax by a non-resident who is employed and has possession and control of the vehicle, then the owner should be required to obtain a license. If, however, the bona fide ownership and control of the vehicle is in a non-resident who is exempt under the law from obtaining a license, then the mere fact that other persons may occasionally drive the vehicle would not deprive the owner of his exemption.

Basing my opinion, therefore, entirely upon the facts as hereinabove stated, it would appear that under Section 1285 (17) the vehicle to which you refer is not required to be licensed.

September 2, 1937.

PASSENGER BUSES MAY OPERATE WITH "C" TAG

Dear Sir:

This is in reply to your recent letter enclosing copy of letter from * * * of Jacksonville. You request my opinion as to whether or not * * * may operate service between Jacksonville and the cities of Neptune Beach and Jacksonville Beach under "C" license tags. You state that this company operates under franchise from both the city of Jacksonville and Neptune Beach.

It is my opinion that such busses may be operated with "C" license tags.

November 12, 1937.

MINIMUM OF FIVE DOLLARS REQUIRED—PROVISION OF SECTION 1286, COMPILED GENERAL LAWS OF FLORIDA, PERMANENT SUPPLEMENT CONSTRUED

Dear Sir:

This is in reply to your letter of November 10th in which you request my opinion concerning the following provision contained in Section 1286, Compiled General Laws of Florida, Permanent Supplement:

LICENSE TAX

"Motor vehicles and trailers acquired after September 30th of any year and not subject to registration prior to that date shall for the remainder of that license year be registered for one-fourth the annual rate: Provided, however, that no license plate shall be issued for less than five dollars."

You particularly request my opinion as to whether or not the five dollar minimum provided in the Statute as above set forth applies to the issuance of a second tag purchased after quarter-year tags go on sale. You call my attention to two particular instances where the bodies of the vehicles are changed, necessitating another registration, in the first instance as a truck and in the second as a passenger car.

In providing for the payment of five dollars as a minimum amount for the issuance of a license tag, the Legislature obviously had in mind that if tags were issued for a less amount, the actual cost incident to the issuance of such tags would almost equal the amount of the tax. It is my opinion that the same reasoning would apply to the issuance of a second license tag on the same vehicle and that no such licenses should be issued for less than five dollars.

March 5, 1937.

SCHOOL BUS—CHASSIS OWNED BY PRIVATE INDIVIDUAL, BODY OF BUS OWNED BY SCHOOL BOARD

Dear Sir:

This is in reply to your request for my opinion as to the proper classification for purposes of determining the license to be paid on a school bus, the chassis of which is privately owned and the body of which is owned by the School Board. You state that your administrative construction of the law is that the bus assembled as above stated comes within the so-called "K" classification set forth in Section 1285, Compiled General Laws of Florida, Supplement, and that no discount is allowed for the weight of the body.

Under said Section 1285, sub-section 14, the Motor Vehicle Commissioner is given authority to determine the classification of, and the amount of tax due on any motor vehicle required to be registered under the laws of Florida. The statute further provides that no determination made by the said Motor Vehicle Commissioner shall be disregarded or set aside in any Court, except where clearly shown to be unwarranted in law or fact.

It is my opinion that the determination of the classification in this instance which has been made by you, and concerning which you inquire, is proper and should be sustained.

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February 15, 1938.

TRUCKS TRANSPORTING NAVAL STORES NOT DEEMED "FOR HIRE" VEHICLES—CHAPTER 16279, ACTS 1933

Dear Sir:

I call your attention to my opinion to Honorable Thos. W. Long as Motor Vehicle Commissioner under date of July 23, 1937 with reference to requiring trucks hauling naval stores to obtain "For Hire" licenses.

My attention has just been called to Chapter 16297, Laws of Florida, Acts of 1933, which was an independent statute classifying and defining naval stores as agricultural products. While this statute was apparently enacted without reference to the statutes relating to motor vehicles it would seem that it must have a bearing on the construction of the latter.

Section 1 of Chapter 16297, Laws of Florida, Acts of 1933 reads as follows:

"That 'crude turpentine gum' (oleoresin), the product of a living tree, or trees, of the pine species, and 'gum-spirits-of-turpentine' and 'gum-rosin' as processed therefrom, are hereby classified and declared to be 'agricultural commodities', 'agricultural products' and 'farm products.'

The exemption contained in Section 1285, Compiled General Laws of Florida, Supplement Edition, reads as follows:

"Provided, however, that vehicles used in the transportation of horticultural and/or agricultural products or used in the transportation of horticultural or agricultural supplies direct to the growers or consumers of said supplies or to associations of said growers and consumers shall not be deemed 'for hire' vehicles within the terms of this law."

In view of Chapter 16297 I must conclude that trucks used in the transportation of naval stores shall not be deemed "For Hire" vehicles.

February 22, 1937.

REGISTRATION—USE OF DEALER TAG OF ANOTHER STATE BY NON-RESIDENT

Dear Sir:

This is in reply to your inquiry of February 15th, in which you request my opinion as to whether or not non-residents who are vacationing in the State whose cars are equipped with "dealer" licenses of other states come within the provisions of Section 1293, Compiled General Laws of Florida, 1927.

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Section 1293 reads as follows:

"The provisions of the foregoing sections relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a non-resident of this State, other than a foreign corporation doing business in this State: Provided, that the owner thereof shall have complied with the provisions of the law of the foreign County, State, Territory or Federal district of his residence, relative to motor vehicles and the operation thereof, and shall conspicuously display his registration number as required thereby. But such exemption shall not apply to motor vehicles operated for hire: Provided, that boards of county commissioners may themselves or in conjunction with municipalities provide and install scales or weighing machine for the purpose of weighing motor vehicles, trailers or semi-trailers and their loads."

Under this section, if the laws of the state issuing the "dealer" license authorize the owner of the car to operate same without restriction, the effect of Section 1293 is to give extra territorial effect within the State of Florida to the license of that state. The purpose of Section 1293 is to grant non-residents the same privileges under their automobile licenses within the State of Florida as they have in their home states, except as otherwise provided by the laws of Florida.

January 31, 1938.

**WHEN NON-RESIDENT REQUIRED TO BE REGISTERED AND
LICENSED—SECTION 1285, SUB-SECTION 17,
C. G. L. PER. SUP.**

Dear Sir:

This is in reply to your letter of January 28th in which you enclosed certain correspondence relating to employees of the patrons of Seminole Driving Park, which is a corporation maintaining training stables and facilities for horses in Orange and Seminole Counties. It appears from this correspondence that the horses are brought to Florida exclusively for training purposes and do not engage in any racing whatsoever. It further appears that many wealthy winter visitors come to Orlando in the winter to keep in touch with the training of their horses. It further appears that a motor vehicle inspector has taken the position that certain trainers in the employ of the owners of the horses must purchase Florida license tags for their automobiles by virtue of the provisions of Sub-Section 17 of Section 1285, Compiled General Laws of Florida, Permanent Supplement. This statutory provision reads as follows:

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"(17) The provisions of law authorizing the operation of motor vehicles over the highways of the State of Florida by non-residents of this State when such vehicles shall be duly registered or licensed under the laws of some other State or foreign Country, shall not apply to any non-resident who shall accept employment or engage in any trade, profession or occupation in this State. In every case where a non-resident shall accept employment or engage in any trade, profession or occupation in the State of Florida, such non-resident shall be required to register his motor vehicles in this State if such motor vehicles are proposed to be operated on the highways of the State of Florida."

"It may be that under the strict letter of the above statutory provision the trainers of such horses would be required to obtain Florida licenses for their automobiles. When the intent of the Legislature, however, is clear the strict letter of the statute must yield to that intent. The following is from the opinion of the Supreme Court of Florida in the case of *Curry vs. Lehman*, 47 So. 18, text page 20:

"The intention of the Legislature, however, in enacting a law, is the law itself, and must be enforced, when ascertained, although it may not be consistent with the strict letter of the statute."

The above statutory provision quite obviously was enacted for the purpose of requiring winter tourists to pay a license tax for operating their motor vehicles on the highways of the State if they were in competition with citizens of Florida for available employment in the State. To put the matter plainly, if a non-resident comes to Florida and obtains employment that might otherwise be available for a resident then the law requires such non-resident to obtain a Florida license tag for his automobile. If, for instance, the horse trainers had been employed by the training stables operating in Florida and not by the owners of the horses before coming to Florida then they would come within the provisions of this statute. If, however, their employment as trainers of particular horses began before coming to Florida and merely continues within the State and is not connected with an established business enterprise operating in the State they do not come within the operation of the statute.

Great care and discretion should be exercised in enforcing the provisions of the statute above set forth. It should be enforced in the light of the legislative intent. No one will deny the justice of such a statute in the light of such legislative intent. To enforce it beyond the scope of such legislative intent however would result in antagonizing winter visitors who constitute one of the most valuable assets of the State. It would be folly to encourage spending hundreds of thousands of dollars

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advertising the advantages of Florida as a winter resort only to harass the tourists by overzealously enforcing the strict letter while overlooking the intent of the above statute.

For the guidance of your department I would state that the following rules might apply in determining whether or not non-residents should be required to purchase a Florida license tag. A non-resident must buy a license when:

1. He is engaged in buying or selling anything in the course of commercial transactions in the State of Florida. (Inter-state commerce transactions excluded.)
2. He is engaged in any profession or occupation dealing with the public for the purpose of making profits.
3. He is employed by any individual, firm or corporation in activities designated under subdivisions 1 and 2.
4. He is employed by any person, firm or corporation for compensation if that person, firm or corporation conducts any considerable portion of its business activities within the State of Florida.

The above statute would not apply to:

1. Household servants of non-residents who are permanently employed by such non-residents and only temporarily in the State with their employers.
2. Personal secretaries, et cetera, of non-residents temporarily present with non-residents in the State.
3. All persons who render personal services on a permanent basis to one particular person who are temporarily in the State attending to such personal services. (This would include the horse-trainer above considered.)

April 28, 1937.

YACHT CAPTAIN NOT REQUIRED TO OBTAIN LICENSE

Dear Sir:

This is in reply to your communication of April 28th * * *. You request my opinion as to whether or not a yacht captain whose boat is in the Miami harbor at the present time and whose home is in Atlanta, Georgia, is required to buy a Florida license for his automobile. His automobile at the present time has a Georgia license tag.

Section 1285, sub-section 17, of the Compiled General Laws of Florida, Supplement, reads as follows:

LICENSE TAX

"The provisions of law authorizing the operation of motor vehicles over the highways of the State of Florida by non-residents of this State when such vehicles shall be duly registered or licensed under the laws of some other State or foreign country, shall not apply to any non-resident who shall accept employment or engage in any trade, profession or occupation in this State. In every case where a non-resident shall accept employment or engage in any trade, profession or occupation in the State of Florida, such non-resident shall be required to register his motor vehicles in this State if such motor vehicles are proposed to be operated on the highways of the State of Florida."

In my opinion the intent of the Legislature as expressed in the statutory provision above set forth would not require such yacht captain to obtain a Florida license tag.

SECTION 9

MISCELLANEOUS LICENSE TAX

January 15, 1937.

CITRUS FRUIT DEALERS, ONE WHO PAYS CASH NOT REQUIRED
TO OBTAIN, AND POST BOND

Dear Sir:

This is in reply to your letter of January 14th enclosing letter addressed to you from * * * "You request my opinion as to whether or not a corporation operating a canning plant which purchases fruit delivered to the plant and pays for said fruit at the time of delivery is required to obtain a license and post bond under Chapter 16860, Laws of Florida, Acts of 1935.

I quote the following from Section 2 of the statute:

"In cases where a sale of citrus fruit is made direct to a purchaser for cash paid at the time of sale, no license shall be required, but any agent of the Commission shall, if the citrus fruit has been properly inspected, graded and labelled as required by law, issue a certificate to the purchaser reciting that the fruit has been inspected and all requirements of law complied with and that the fruit has been paid for, and such certificate shall be accepted in lieu of a license by all agents and employees of the Commissioner. No fee shall be charged for such certificate."

From the facts stated in the letter from * * * it would be my opinion that the corporation operating the canning plant in this particular instance would not be required to obtain a license, in view of the provision of the statute above set forth. Since the posting of the bond referred to in Section 3 of the act is a prerequisite to obtaining a license and since the license is not required it would therefore follow that this corporation would not be required to post a bond. It would be my opinion that this corporation would not be subject to prosecution for operating without a dealer's license under the circumstances which you state.

In this connection I call your attention to an opinion rendered to you under date of January 11, 1936, dealing with the definition of a "cash buyer" under the terms of the Citrus License and Bond Law.

October 9, 1937.

COIN-OPERATED MACHINES AS APPLYING TO COIN BOXES OF
TELEPHONE COMPANIES—NOT REQUIRED TO PAY.—
CHAPTER 18011, ACTS OF 1937, SECTION 19

Dear Sir:

I acknowledge receipt of your letter of October 4, 1937, in which you request an opinion as to whether or not Section 19 of Senate Bill 917

MISCELLANEOUS LICENSE TAX

(which is the Occupational License Act of 1937, and is Chapter 18011, Acts of 1937) is applicable to coin-operated telephone pay stations and other coin boxes of telephone companies.

Section 19 of Chapter 18011 provides as follows:

"Every person who operates for a profit any machine, contrivance, or device which is set in motion or made or permitted to function by the insertion of a coin or slug, shall pay a license tax of \$5.00 for each machine, contrivance or device; * * *

Senate Bill 917, as shown by a casual reading of this Act, is not intended to be inclusive. The intent of the Act is clearly shown in Section 1, wherein it is provided that no firm, person or corporation shall engage in or manage any business, profession or occupation for which an occupational license tax is required by this Act or any other law of this State unless a license is secured. The Act does not attempt to license an occupation where the identical type of license is required under some other law of the State of Florida. This is further shown by the fact that the Act specifically repeals certain sections of the Revised General Statutes of Florida, 1920, and certain other occupational acts and then by Section 39 specifically states that nothing therein shall be construed to repeal any license tax imposed by law and not specifically repealed thereby.

Among the laws not repealed is the following: Section 1260, Compiled General Laws, (Section 987, Revised General Statutes), which provides: "Telephone systems, owned or operated by any person, firm or corporation, or company, operating in this State for profit, shall pay a license tax as follows: On the first one thousand phones or instruments, or fraction of a thousand, ten cents (10c) for each phone or instrument operated or installed; on the second thousand, or fraction over one thousand, eight cents (8c) for each phone or instrument operated or installed; and all over the second thousand, six cents (6c) for each phone or instrument operated or installed; provided, owners or managers of telephone systems operating or having installed less than one hundred phones or instruments shall not be required to pay a license tax."

It is therefore my opinion that since a telephone system owned or operated by a corporation is required to pay a license tax based on the number of phones operated or installed by the system, that they are not required to pay an additional license on the coin boxes of the telephone companies under the provisions of Section 19 of Chapter 18011, Laws of Florida, Acts of 1937.

MISCELLANEOUS LICENSE TAX

August 15, 1938.

COMMISSARY, REQUIRED TO PAY—CHAPTER 16848, ACTS OF 1935

Dear Sir:

I acknowledge receipt of your letter of August 10, 1938, in which you state:

"I am in receipt of the enclosed letter * * * with reference to whether or not a commissary in a turpentine camp should be held to be a store under the provisions of Chapter 16848, Acts of 1935.

"Please give me your opinion as to whether or not a commissary would be required to pay a license tax and a gross receipts tax under the provisions of Chapter 16848, Acts of 1935."

I have read with interest the letter written July 22 to * * * by the American Turpentine Farmers' Association in which they advise that a commissary is not a store and is not required to pay the tax in question.

My opinion is that a commissary is a store within the purview of Chapter 16848 and is required to pay the license provided for under the said Act.

The fact that turpentine has been exempt as an agricultural product by the express provisions of the Wages and Hours Act would have no bearing whatsoever in a case of this nature. An ordinary commissary sells the same merchandise as any other store and I can see no reason why the same should be exempt from the provisions of this Act.

March 24, 1938.

CONTRACTORS DOING WORK FOR UNITED STATES GOVERNMENT,
ETC., IF LIABLE UNDER CHAPTER 17178, ACTS OF 1935*Dear Sir:*

I acknowledge receipt of your letter of recent date in which you ask my opinion on several questions stated therein, relative to Chapter 17178, Laws of Florida, Acts of 1935. In the opinion I will list your questions and then follow with the answer to each specific question.

"1. Where a Government building, the contract price of which will exceed \$50,000.00, is to be erected within the State of Florida, and bids are to be submitted to a Government agency in Washington, is a contractor doing business in the State of Florida subject to the provisions of the above mentioned Chapter for the privilege of submitting a bid to the Government agency in Washington, assuming that the contractor has not

MISCELLANEOUS LICENSE TAX

done any other work or made any other bids to subject him to the payment of the license?"

On the 8th day of November, 1935, I advised you that this Act was not applicable where the Federal Government supplies a portion of the money and retains control over the letting of the contracts and over the expenditure of the money.

It is true that the Supreme Court of the United States has recently broadened the tax basis by its decision in the case of *James vs. Dravo Contracting Co.*, 32 L. Ed. (Advance Sheet 5), page 125. I do not believe, however, that this decision is broad enough to permit the State to collect a tax for the privilege of bidding on a federal project. Chapter 17178 is an Act levying an occupational tax on all who bid on certain public projects. The effect of this Act is to impose a condition upon the bidding for any project mentioned within the Act. I do not believe that the State of Florida would have authority to impose any such condition or in any way interfere with the bids upon a federal project.

"2. Would a contractor, not engaged in business in the State of Florida, be subject to the provisions of said Chapter for the privilege of submitting a bid to a Government agency in Washington for a job to be done in the State of Florida?"
My answer is similar to that of Question 1.

"3. Is a contractor who executes a contract in excess of \$50,000.00 for a Government project within the State of Florida subject to the license?"
My answer is similar to Question 1.

"4. Is a railroad bridge to be built by the receivers of the * * * railway such a structure as contemplated by the above mentioned Chapter, assuming the contract price to be in excess of \$50,000.00?"

It is my opinion that a railroad bridge is such a structure as is contemplated by Chapter 17178. This Act applies to all persons bidding to construct within the State of Florida any public building, highway, * * * bridge, electric or steam railway, etc. The Supreme Court of Florida, in the case of *Demeter Land Company vs. Florida Public Service Co.*, 128 So. 402, held that the term "public works" means all fixed works constructed for public use, as railways, docks, canals, waterworks, roads etc.

"5. Would an out of State contractor subject himself to liability for the license by submitting a bid for a non-Federal project to be constructed within the State of Florida when the bid is submitted to authorities without the State of Florida and

MISCELLANEOUS LICENSE TAX

likewise when a bid is submitted to authorities within the State of Florida?"

It is my opinion that Question 5 should be answered in the affirmative.

November 22, 1937.

CONTRACTORS BIDDING ON CERTAIN STATE HIGHWAY JOBS
REQUIRED TO PAY

Dear Sir:

I have your letter of recent date wherein you ask the following question: "Whether or not it is necessary for contractors who bid on State highway jobs that exceed \$50,000.00 to hold a State license authorizing him to bid on these amounts prior to submitting his bid, or is he privileged to take out said license if he is the successful bidder?"

Chapter 17178, Acts of 1935, Section 1, is of course, the applicable Act and this Section seems to be rather clear upon this point and fully answers the question. It reads:

"Every person, firm or corporation who, for a fixed price, commission, fee or wage, *offers or bids* to construct within the State of Florida any public building, highway, street, sidewalk * * * or any part thereof, the cost of which exceeds the sum of Fifty Thousand Dollars (\$50,000), shall apply for and obtain from the Comptroller an annual State-wide license and shall pay for such license a tax of One Thousand Dollars (\$1,000) *prior to offering or submitting any bid on any of the above enumerated projects.*" (Italics supplied.)

I am, therefore, of the opinion that it is necessary for the contractor who bids on State highway jobs that exceed \$50,000.00 to have a State license so authorizing him prior to the submission of his bid.

August 23, 1938.

CREAM IN COTTAGE CHEESE TAXABLE UNDER MILK
CONTROL ACT

Dear Sir:

As I understand your letter of August 22nd, what you desire is an opinion as to wheether or not the cream in cottage cheese is taxable under Chapter 18022, Acts of 1937, this Act being commonly known as the Milk Control Act.

You state that a well defined proportion of cream goes into the manufacture of cottage cheese and that it should be taxed on the basis

MISCELLANEOUS LICENSE TAX

of the whole milk equivalent of the cream on the percentage on which cream is ordinarily taxed. Section 9-4 (b) is where we must look to determine who and what is taxed under this Act. This Section provides:

"* * * for the privilege of continuing in or engaging in the business of distributing milk or acting as a distributor under the provisions of this Act, there is hereby imposed upon every distributor a tax in the amount equal to one-tenth of one cent upon each gallon of milk distributed by each such distributor during each calendar month."

It would seem from this Section that the tax was placed upon the distributor. The word "distributor" as defined in the Act means:

"'Distributor' means any milk dealer who operates a milk gathering station or processing plant where milk is collected and bottled or otherwise processed and prepared for sale."

When this definition is read in connection with the one as to milk, which is:

"'Milk' means liquid milk and/or cream fresh, sour or storage, and/or condensed or concentrated whole milk * * * in each instance where quantity is referred to, the intent is to include its whole milk equivalent."

it seems that the intent of the Act was to tax a distributor on the basis of his use of milk from the standpoint of its whole milk equivalent, and the milk is taxed on the gallonage basis regardless of the fact that it may finally be actually distributed as cottage cheese.

In the 1935 Act, being Chapter 17103, the tax was upon a poundage basis and in Paragraph 4, Section 9, (3219 (46) Compiled General Laws, Permanent Supplement) after providing for the method by which the tax was to be computed, this appears:

"It is not the intent that milk utilized or sold in the form of manufactured products shall be included in the determination of the amount of license fee, but the fluid milk equivalent of cream and/or condensed or concentrated milk * * * shall be included in such determination."

And although this was omitted from the 1937 Act, it was apparently done so in order that there would be no confusion as the method of taxation was then materially changed from a poundage basis to a gallonage basis. But the Legislature apparently did not intend to allow milk utilized or sold in the form of manufactured products to escape taxation, but intended that the fluid milk equivalent would be the basis for the computation of the tax.

MISCELLANEOUS LICENSE TAX

The apparent thought behind the Act was to completely regulate and tax the milk industry by this one separate Act. This seems to be born out by the fact that under Section 9-4 (b), this exception is made:

"No payment of fees provided for in the Milk Products Law, Chapter 14762, Acts of 1931, Legislature of the State of Florida, shall be required while this Act is in full force and effect, but are hereby expressly suspended for such period of time."

I, therefore, am of the opinion that milk utilized or sold in the form of cottage cheese shall be included in the determination of the amount of tax to be paid upon the basis of the fluid milk equivalent of cream on the percentage upon which cream is ordinarily taxed.

June 10, 1937.

DANCING PLACES—REQUIRED TO PAY UNDER CHAPTER 18011

Dear Sir:

I acknowledge receipt of your letter of June 10, in which you ask the following question: "At the request of interested parties I will appreciate your advising me whether in your opinion Sec. 23 of Chapter 18011, passed at the Regular Session of the 1937 Legislature, providing that 'every person who operates for a profit any place where dancing is engaged in or entertainment such as variety programs or exhibitions is provided, shall pay a license tax of \$100.00, etc.,' will require persons to take out such license who are operating the ordinary roadside filling stations, small country stores, cold drink stands, small beer gardens, lunch counters, small restaurants and other similar small businesses in which are placed and operated automatic phonographs or music boxes with coin slot devices, which customers of such places may at their option play and dance by without charge other than coins inserted in such automatic phonographs."

I have examined Section 23 of Chapter 18011 and it is rather inclusive. This section in effect provides that no escape shall be permitted from the tax on the theory that the dancing is merely incidental to the business engaged in.

It is my opinion that the administrative interpretation of this section will be that any place is subject to the payment of this tax which provides a floor for dancing purposes or where dancing is ordinarily engaged in by the customers or others who frequent such place or places.

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March 14, 1938.

DEALERS IN CREAM IMPORTED REQUIRED TO PAY LICENSE--
CHAPTER 18022, MILK CONTROL ACT

Dear Sir:

This is in reply to your oral request for an opinion upon the above question.

The title to the Act provides: "An Act to regulate and control the distribution of fluid milk and cream * * *." If the Act did not provide its own glossary there might be some doubt as to whether or not cream would be included in the word "milk," because the Act thereafter uses the word "milk" instead of milk and cream. The word "milk" is defined as follows:

"Milk means liquid milk and/or cream, fresh, sour or storage * * * in each instance where quantity is referred to, the intent is to include its whole milk equivalent." Section 2.

It is, therefore, obvious from this definition that it was the intention of the Legislature to treat milk as including cream.

Section 13, sub-section (g) seems to cover the importation of milk into this State. It reads:

"It is the intent of the Legislature that the instant, whenever that may be, that the handling within the State by a milk dealer of milk produced outside of the State becomes a subject of regulation by the State, in the exercise of its police powers, the restrictions set forth in this Act respecting such milk so produced *shall apply and the powers conferred by this Act on the Board shall attach*. After any such milk so produced shall have come to rest within the State, any sale, within the State by a licensed milk dealer required by this Act to be licensed, or any such milk purchased from the producer at a price lower than that required to be paid for milk produced within the State purchased under similar conditions, shall be unlawful."

It is apparent that it was the intention of the Legislature to not only provide for the regulation and licensing of persons who deal in milk produced in Florida, but to also regulate and provide for the licensing of persons who deal in milk produced outside of the State.

The Legislature's statement of fact as contained in Section 1 is most illuminating upon this question. It is clear from a reading of this Section that it was the intention of the Legislature to control the entire milk industry in order to "protect the public health, safety and welfare" and to prevent "unhealthful, unfair, unjust, destructive, demoralizing and un-

MISCELLANEOUS LICENSE TAX

economic trade practices" carried on in the "production, sale and distribution of milk and milk products."

If there were no regulation and no requirements for a license upon dealers who import milk into this State, the entire provisions of the Act would be valueless and the citizens of Florida who were engaged in the milk industry would quickly be ruined by the importation of milk into this State, from those areas which are many and close by, where milk can be produced and sold much cheaper than in Florida.

I cannot conceive of the Legislature intending the creation of any such situation, and therefore conclude that any dealer in cream that is imported into the State of Florida and offered for sale herein, after such cream comes to rest in this State, is subject to all of the provisions of the Milk Control Act and must secure a license either as a milk dealer or as a distributor according to whether or not he is a milk dealer or distributor as defined by the Act.

March 24, 1938.

**FAIR ASSOCIATIONS REQUIRED TO PAY UNDER CHAPTER
17759, ACTS OF 1937**

Dear Sir:

I acknowledge receipt of your letter of recent date, in which you state:

"Under Chapter 17759 of 1937, traveling shows are prohibited from operating in connection with any Fair without paying the license tax as now provided by law. Can a Fair Association lease the equipment of a traveling show, operate it, and not be required to secure the license?

"For the purpose of determining the liability for license is there any difference between leasing the equipment from a traveling show or from a business engaged in leasing carnival equipment or permitting the owner to operate it under a percentage agreement?"

It is my opinion that under said Act it will be necessary for the Fair Association leasing the equipment of a traveling show and operating it to pay the tax under said Act.

Amended Section 10 provides:

"It is hereby declared to be the purpose and intent of this Section to prevent tax evasion and the provisions hereof shall be liberally construed to the end that all subterfuge, excuses and ruses for the evasion of any lawful tax may be eliminated."

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I do not see how the fair association would be injured by the payment of the tax in question as under the same section of the Act the amount that is collected as state and county license taxes is immediately appropriated for the benefit of the fair association.

I do not believe that the Act in question has any distinction between leasing equipment from a traveling show or from a business engaged in leasing carnival equipment or permitting the owner to operate it under percentage agreement.

February 4, 1937.

FISH—FRESH WATER FISH LICENSE IN ADDITION TO SALT
WATER FISH LICENSE

Dear Sir:

I am in receipt of your letter of the 3rd instant enclosing a communication from Judge T. W. Conely, Jr., of Okeechobee County, and making inquiry with reference to Section 31 of Chapter 13,644, Laws of Florida, Acts of 1929, relating to fresh water fish dealers' licenses and, particularly, with reference to the last sentence in said Section, reading as follows:

"This does not apply to dealers operating exclusively in salt water territory."

In reply I beg to say since Lake Okeechobee by statute is made salt water a dealer in fish taken from such Lake, except black bass, would be required to have a salt water fishing license. If the dealer sells fish taken from other waters which are fresh, he would, in my opinion, be required to also obtain a fresh water fish dealer's license notwithstanding the above quoted provision of the statute exempting dealers operating exclusively in salt water territory, since in my view the purpose of said provision was simply to exempt dealers operating exclusively in salt water fish.

October 8, 1937.

FISH—FRESH WATER—RESIDENT OF COUNTY MAY FISH IN
HOME WATERS WITHOUT LICENSE—SEC. 20 OF CHAP.
13,644 OF 1929, AS AMENDED BY CHAP.
17,015 OF 1935.

Dear Sir:

I am in receipt of your letter of the 6th instant, referring to Section 20 of Chapter 13,644, Acts of 1929, as amended by Chapters 17,015 and 17,018, Acts of 1935, and particularly that part of said Section relating to residents fishing in home waters without a license.

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Chapter 17,018 of 1935, as well as Chapter 17,015 of 1935, are Acts to amend Section 20 of Chapter 13,644 of 1929. Chapter 17,018 was passed by the Legislature about the middle of the session and was, therefore, superseded by Chapter 17,015 of 1935 which was passed toward the close of said session.

That particular part of Section 20 of Chapter 13,644, as amended by Chapter 17,015 referred to by you and now appearing as Section 1977 (20), Compiled General Laws of Florida, 1936 Supplement, reads as follows:

"* * * No license shall be required for residents of the State of Florida to take by hook and line, rod and reel, bob, spinner or troll, fresh-water fish in the county of their legal residence and/or in all lakes and rivers forming the boundary line or lines of counties. * * *

In reply I beg to say that the purpose of said law appears to have been to allow a resident of a County to fish in his home waters, including boundary waters. It is, therefore, my opinion that under the provisions of the above quoted statute a resident of a County may fish without license in lakes, rivers and streams when the County of his legal residence adjoins such waters. I do not think that the purpose of the law was to allow a resident of any County in the State to fish without a license in waters forming a County boundary in other parts of the State and not bounding his own County. For instance, I do not think the law would permit residents of Leon County, Florida, to fish without a license in the waters of Lake Okeechobee, nor do I think residents of Monroe County, Florida, would be authorized, under said statute, to fish without a license in the waters of the St. Johns River or Chat-tahoochee River.

February 16, 1937.

FISH PEDDLERS' LICENSE REQUIRED

Dear Sir:

I have your letter, together with attached correspondence relative to the question of whether or not a fish dealer who is qualified with the Conservation Department as such would be required to secure a peddler's license under Section 1222, Compiled General Laws, 1927, when the fish is peddled for sale in a county other than the county in which the same were caught.

Chapter 16072, Acts of Florida, 1933, provides that any person holding a fresh or salt water fish dealer's license shall be entitled to sell or dispose of fish directly to consumer only, in the county where caught or acquired, by selling or disposing of same or offering same for sale from

MISCELLANEOUS LICENSE TAX

vehicles in the county where the fish disposed of were caught or acquired by the dealer, without being subject to the special peddling tax provided for by section 12, paragraph f, Chapter 14491, Laws of Florida, 1929, or subject to general peddler's license provided for by section 1222.

Section 1222 is as follows: "Peddlers of Merchandise. Peddlers of merchandise not otherwise enumerated specifically herein, shall pay a license tax of One Hundred and Fifty Dollars in each county."

A peddler's tax is on the occupation, not the goods, and is usually held to be imposed under the police power. It is therefore my opinion that where fish are peddled for sale in a county other than the county in which the same were caught or acquired and are not therefore exempt under Chapter 16072, Laws of Florida, 1933, the vendor thereof should be required to obtain a license under section 1222.

September 27, 1937.

**FISH—SALT WATER—PEDDLERS REQUIRED TO PAY WHOLESALE
AND RETAIL LICENSE**

Dear Sir:

I am in receipt of your letter of the 17th instant making inquiry what license you are required to collect from people peddling fish in counties other than the county in which the fish are caught.

I assume that you have reference to fish dealer's license since I know of no statute authorizing your Department to issue peddler's license.

In reply your attention is called to Section 1 of Chapter 17,914, Laws of Florida, Acts of 1937, which appears to be the latest statute on the subject of your inquiry.

Your attention is called to the second paragraph of said Section 1 which provides that retail licenses shall only be good in the county for which they are issued.

Your attention is further called to the third paragraph of said Section 1, reading as follows:

"Providing that any person himself engaged in salt water fishing with gill-nets or hook and line, rod and reel and who owns his equipment and sells only his own catch of fish and does not buy fish from any one else such person upon making an affidavit to the Supervisor of Conservation substantiating the above facts to be true the Supervisor of Conservation is required to furnish such a person a permit allowing such person to sell their fish direct to trucks or dealers without having to pay a wholesale license."

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Your attention is further called to the first sentence in the fifth paragraph of said Section 1 reading as follows:

"No person, persons, firm or corporation shall engage in wholesaling, shipping or transporting in any manner, fish or sea food of any kind until such person, persons, firm or corporation shall have first procured from the Supervisor of Conservation of the State of Florida, a permit which shall be numbered to correspond with the number of the license of the wholesale dealer.
* * *

Your attention is further called to the seventh paragraph of said Section 1 reading as follows:

"No person, persons, firm or corporation shall engage in the business of wholesale fish dealer, retail fish dealer or commercial fishing, until such person, persons, firm or corporation shall have first procured the license as herein provided from the Supervisor of Conservation of the State of Florida."

In view of the above it appears that any one peddling fish as a retail dealer in a single county would be required to pay a retail dealer's license unless he was exempt under the provisions of the third paragraph of said Section above quoted. It appears further, if such person peddles as retailer in more than one county, he should have an additional retail dealer's license in such additional county.

If he should peddle or sell as a wholesale dealer on one or more counties he should have a wholesale dealer's license unless exempt under the provisions of paragraph three of said Section 1, as above quoted.

October 29, 1937.

FISH—SALT WATER—FOREIGN BOATS REQUIRED TO PAY
—CHAPTER 17917, ACTS 1937; SECTION 1830 C. G. L.

Dear Sir:

I am in receipt of your letter of the 28th instant in which you state that you are advised that a foreign fleet of boats is fishing in the outside water of the State. You make inquiry if these alien fishermen should pay the boat license required by Senate Bill No. 1189, Chapter 17,917 of 1937, and should also pay the alien fishing license prescribed in Section 1830, Compiled General Laws of Florida, 1927.

In reply I beg to say in my opinion your inquiry should be answered in the affirmative. Your attention is called, however, to the case of *Ex Parte Gilletti*, 70 Fla. 442, 70 So. 446, in which the Court held that the provisions of said statute requiring an alien or non-resident to pay a license tax of \$10.00 per annum before he can engage in taking fish

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or oysters from the salt waters of this State for any purpose other than his own individual use applies to aliens or non-residents of the State who engage in taking fish and oysters on their own account, but not to laborers who are employed to take fish or oysters for their employers.

The boundaries of the State are defined by Article I of the State Constitution, reading as follows:

"The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama, and the thirty-first degree of north latitude; thence due east to the Chattahoochee river; thence down the middle of said river to its confluence with the Flint river; thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to, and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land to a point west of the mouth of the Perdido river; thence to the place of beginning."

July 1, 1937.

FISH—SALT WATER—FRACTIONAL LICENSE NOT REQUIRED FOR
BOATS UNDER S. B. 1189, ACTS 1937

Dear Sir:

I am in receipt of your letter of the 28th ultimo enclosing copy of Chapter 17917, Acts of 1937, providing licenses on boats engaged in fishing. You make inquiry if you are authorized to issue fractional licenses on boats required to be licensed under said Act.

Section 1867, Compiled General Laws of Florida, 1927, provides that salt water fishing licenses on dealers and boats shall begin on the 1st day of October each year, and Section 7 of the above mentioned Senate Chapter 17917 provides that said Act does not repeal any local or general law but shall be construed and considered as supplementary thereto.

I have read the above mentioned Act, together with other general salt water fishing laws, and I find no authority for issuing fractional licenses to boats required to be license under said Chapter 17917.

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July 23, 1937.

FISH—SALT WATER BOAT LICENSES NOT REQUIRED*Dear Sir:*

I am in receipt of your letter of the 6th inst., enclosing a communication under date of the 1st inst., from Honorable Philip D. Beall of Pensacola, relative to Chapter 17917 (S. B. 1189) of 1937, relating to the question of whether or not said Act applies to fishing boats engaged in fishing only in waters beyond the boundaries of the State. You request my opinion in the matter.

In reply I beg to say that upon consideration of the title, as well as the body of Chapter 17917 (S. B. 1189) of 1937, it is my opinion that the same does not apply to fishing boats taking fish only in waters beyond the territorial limits of the State of Florida. The boundaries of the State of Florida, as defined by Article I of the State Constitution, fix the outside limits of the State of Florida on the Gulf side at three leagues from the mainland. A marine league is a distance of three geographical miles. A geographical mile, according to Twentieth Century Dictionary, is 6080.27 feet.

December 4, 1937.

**FISHING—SALT WATER LICENSES REQUIRED—WHEN ALIENS OR
NON-RESIDENTS REQUIRED TO PAY***Dear Sir:*

Answering your letter of the 2nd instant I beg to say under the provisions of Chapter 17,914, Acts of 1937, any one selling salt water fish other than oysters, clams and wilkes should have either a retail or wholesale dealer's license unless exempt by permit under said Act.

Further answering your inquiry I beg to say that under Section 1 of said Act, as well as Section 1830, Compiled General Laws of Florida, 1927, all aliens or non-residents who engage in taking salt water fish in this State other than for personal use are required to pay an annual license tax of Five Dollars.

February 16, 1938.

**FOOTBALL STADIUM—USED FOR ENTERTAINMENTS, EXHIBI-
TIONS AND SHOWS REQUIRED TO PAY UNDER
SECTIONS 1244 AND 1245 C. G. L.***Dear Sir:*

I have your letter of the 15th, stating that there has been built in the City of Miami in Dade County, Florida, a football stadium in which

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it is sought to present various forms of exhibitions and entertainments, including among others a skating exhibition on a special constructed temporary ice rink within the State, professional football games presented by professional exhibition teams, rodeos, etc., all being the productions of persons engaged in the business of traveling shows or amusement enterprises, and not local exhibitions or performances. You request my opinion as to whether or not licenses should be issued for the exhibition of said shows and games, etc., under the provisions of Section 1244 or Section 1245, Compiled General Laws, 1927.

It appears from your letter that the troupes and teams which put on the shows in the stadium are travelling shows and teams, and that they travel from town to town. It seems to me that the provisions of Section 1244 are intended to cover shows of all kinds giving performances under tents, enclosures, or temporary structures of any kind. Especially is this true since this section was amended by Section 17758, Laws of Florida, Acts of 1937, while the provisions of Section 1245 cover the cases of theatrical shows or travelling players and minstrels giving exhibitions in buildings fitted up for such shows or exhibitions, and also cover the owners or managers of theaters or halls employing travelling troupes, theatrical, operatic, or minstrel, giving performances in buildings fitted up for such purposes, or moving picture shows in buildings permanently used for such purpose.

This section also covers travelling moving picture shows giving exhibitions in tents.

It therefore appears to me that if a travelling troupe of players or minstrels comes to a town and rents a building fitted up for their especial purposes with the exception of perhaps changing the scenery to fit their different forms of entertainment, the building being used for such purposes exclusively, such troupe should pay license under Section 1245.

It further appears that if a person owns a theater or hall, and employs travelling troupes, theatrical, operatic, or minstrel, and gives performances in buildings fitted up for such purposes, he should be allowed to pay a license for all of such exhibitions under the provisions of Section 1245.

"Theater" is defined by Webster as being a public building, an open place furnished with seats, usually arranged in tiers, and provided with a platform or stage where plays or dramatic performances are given. In my opinion, this definition would cover the stadium at Miami.

It further appears to me that a show of any kind, giving a performance under tents, enclosures, or temporary structures of any kind, on premises not adapted to the purpose of giving performances or exhibitions of troupes, etc., but are only made so with the temporary erection

MISCELLANEOUS LICENSE TAX

thereon of tents, fences, etc., should pay a license under the provisions of Section 1244.

It is therefore my opinion that since the stadium at Miami is a building fitted up for the purpose of exhibitions or entertainments, any theatrical show or travelling players and minstrels giving a performance in the stadium, when they rent the same for the purpose of giving the exhibition, should pay a license tax of \$25.00 for each performance.

If the theatrical show or travelling players and minstrels are employed by the owner or manager of the stadium, then he would under Section 1245 be allowed to exhibit as many of such performances as he desired, upon the payment of a license tax of \$200.00 per annum.

April 11, 1938.

**FROZEN DESSERTS—ITINERANT MAKERS OF ICE CREAM
REQUIRED TO PAY—CHAPTER 16047, ACTS OF 1933**

Dear Sir:

This is in reply to your recent letter requesting my opinion as to whether the annual retail manufacturer's ten dollar license fee provided for in Section 3 of the Frozen Desserts Law would authorize the retailers to operate as an itinerant vendor of ice cream.

You state that itinerant makers of ice cream operating under the ten dollar license charge to retailers move from place to place over the State, usually operating about one week at each stop, and making ice cream sold at each stop under conditions which vary with each change of location.

The underlying purpose of the Frozen Desserts Law was to protect the public from unwholesome and mis-branded frozen desserts. This purpose is clearly evidenced in Section 4 which provides that the Commissioner must satisfy himself concerning the maintenance of standards of sanitation by manufacturers of frozen desserts and is prohibited from licensing any manufacturer who mis-brands his products.

It is therefore my opinion that the Frozen Desserts Law necessarily requires the manufacture and sale of frozen desserts at a fixed location under conditions which may be supervised by the inspectors of your department. An itinerant maker of ice cream would therefore be required to apply for and obtain a separate license each time he changes location.

MISCELLANEOUS LICENSE TAX

April 9, 1938.

FROZEN DESSERTS—VENDOR OF "ICE MILK" MUST COMPLY
WITH CHAPTER 16047, ACTS OF 1933*Dear Sir:*

This is in reply to your letter of recent date in which you state the following:

"* * * Chief Milk Inspector, informs this office that a certain manufacturer of ice cream holding a wholesaler's license under authority of the Frozen Desserts Law, has taken the position that a product made by him, known as 'Ice Milk Mix' (Section 1, Paragraph F), when converted into ice milk by the purchaser through what is known as the 'still freezing' process, may be resold as ice milk without conforming to the regulations governing the sale of ice milk as set forth in Section 7 of the Frozen Desserts Law."

Section 7 of the Frozen Desserts Law reads as follows:

"PROHIBITION AS TO SALE. (a) No person shall sell, advertise or offer or expose for sale any frozen dessert unless the manufacturer thereof is a licensee under the provisions of this article.

(b) No person shall sell, offer for sale or advertise for sale any frozen dessert, if the brand name of the frozen dessert or the label upon it or the advertising accompanying it shall give a false indication of origin, character, composition, or name of manufacturer, or is otherwise false or misleading in any particular.

(c) No person shall sell or offer or expose for sale ice milk, unless contained in a package or enclosed in a wrapper, upon which package or wrapper, shall be conspicuously printed the words, 'Ice Milk,' in not less than 14 point type.

(d) No person shall sell, advertise or offer or expose for sale any imitation ice cream.

(e) No person shall sell, advertise or offer or expose for sale a frozen dessert if it contains any fats, oils, or paraffin other than milk fats, except such fats or oils as are naturally contained in the flavors used."

It is my opinion that the purchaser of the "Ice Milk Mix" above referred to must comply with the provisions of Section 7 in the resale of the frozen product.

MISCELLANEOUS LICENSE TAX

October 18, 1937.

FROZEN DESSERTS—MANUFACTURER NOT REQUIRED TO PAY
LICENSE FEES UNDER CHAPTER 16047, ACTS OF 1933*Dear Sir:*

This is in reply to your letter of October 12th in which you present two propositions.

You first inquire whether a manufacturer is a retail manufacturer or a wholesale manufacturer under Section 3 of Chapter 16047, Laws of Florida, Acts of 1933, who bids on the supply of frozen desserts for the Coast Guard at what you describe as "a wholesale price." Unless the sale to the Coast Guard is made for the purpose of re-sale at retail the manufacturer would not by reason of such sale be a wholesale manufacturer. What you describe as "a wholesale price" may simply be a reduced retail price. I call your attention to the following from Words and Phrases, First Series, Vol. 8, page 7450, dealing with the distinction between a wholesale dealer and a retail dealer:

"A wholesale dealer in spirituous liquors is one who makes and sells to purchasers packages or quantities for the purposes of trade or being resold. The distinction between the 'wholesale dealer' and the 'retail dealer' does not depend upon the quantity sold by either. *State vs. Tarver*, 79 Tenn. (11 Lea) 658, 660."

You next inquire concerning a restaurant which manufactures frozen desserts. You request my opinion as to whether or not the fact that this restaurant serves ice cream cones, some of which cones are carried out to cars and eaten off the premises, renders the restaurant ineligible for the exemption in Section 3 which reads as follows:

"There shall be no fee for the issuance of a license to a hotel, restaurant or boarding house, for the manufacture of frozen desserts sold to the patrons thereof for consumption exclusively on the premises where manufactured."

I think that we may properly presume that ice cream cones are sold for the purpose of being consumed on the premises for ice cream cones by their very nature cannot be carried far from the premises. It is therefore my opinion that the sale of such cones would not render such a restaurant liable for payment of the license fees.

MISCELLANEOUS LICENSE TAX

October 15, 1937.

INSECTICIDES AND FUNGICIDES—REQUIREMENTS UNDER
CHAPTER 17992, ACTS OF 1937*Dear Sir:*

This is in reply to your letter of October 4th, in which you propound several questions dealing with the construction of Chapter 17992, Laws of Florida, Acts of 1937.

To begin with, you call my attention to the fact that Section 3 of the statute requires all persons manufacturing, importing for sale, or selling agricultural insecticides and fungicides in Florida to obtain an annual license from the Commissioner of Agriculture. Section 3 also exempts from the license requirement jobbers and retail dealers selling insecticides and fungicides, when the manufacturer or importer of some possesses a license required by the Act, and when necessary registration fees have been paid by him.

The questions you propound are as follows:

1. Section 6 of this Act fixes the annual license fee for manufacturers and importers at \$125 and fixes the fee for registering each brand of insecticide and fungicide at \$2.50. Section 6 also exempts retail dealers and jobbers from license and registration fees when such license and fees have been paid by the manufacturer or importer of the materials in question. The question has arisen as to whether license fees and registration fees are collectable from retailers handling properly registered and licensed products who may sell such products to a consumer, and, prior to delivery, mix them as a matter of convenience to the purchaser. Would a retailer compounding such mixtures for direct application by the consumer be held a manufacturer under the definition of the term set forth in Section 12, Paragraph F of this statute?

2. If a dealer who has paid no license fee and no registration fee sells materials to a consumer and uses or permits the use of his mixing equipment for compounding such ingredients, making no charge for the mixing machinery or the labor involved in mixing, would such dealer be held a manufacturer and subject to payment of license and registration fees?

3. In connection with this problem, may we also inquire whether the labeling requirements set forth in Section 1 of this Act shall be applied in those cases involving direct sales to consumers, by retailers, under the foregoing circumstances?"

MISCELLANEOUS LICENSE TAX

The first and second questions propounded by you involve the same principles. We must grant, to begin with, the right of any person to purchase properly registered insecticides or fungicides from a dealer, and after the purchase is made to mix them in any way he sees fit. If the purchaser mixed his own ingredients for his own use, certainly he would not be considered a manufacturer under the provisions of Section 12 (f) of the Act, even though he would be such under the strictest interpretation of the statutory language.

A "manufacturer" is defined in Section 12 (f) of the statute as follows:

"The word 'manufacturer' means any person engaged in the business of importing, preparing, mixing, or manufacturing agricultural insecticides or fungicides, as defined in this Act, for sale within the State of Florida, either direct to consumers or by or through other media of distribution; any person in whose factory, warehouse or place of business agricultural insecticides or fungicides are manufactured; the word 'manufacture' means preparing, mixing, or manufacturing."

We would necessarily reach the same conclusion if after the ingredients were purchased, someone else mixed same for the purchaser. It is therefore the one who mixes such ingredients "for sale" who is to be considered as coming within the statutory definition of "manufacturer." It is just as obvious, however, that if a dealer were to, in fact, sell the mixture under the pretext of selling the ingredients and then mixing same after the sale, the dealer would then be a "manufacturer," and would be subject to the payment of a license as such, and would be further required to register each separate type of mixture.

Whether or not a dealer who has mixing equipment in his place of business operates as a manufacturer or merely as an agent for mixing the ingredients of a third party for the sole use of that third party, is necessarily a question of fact to be determined in the first instance by the department of government administering the statute.

In determining just what the factual situation may be, it is my opinion that the Commissioner of Agriculture is authorized to indulge the presumption that the service performed in mixing the ingredients is a part of the transaction in which the ingredients are sold, and the dealer would therefore be a "manufacturer" under the provisions of the Act.

Under the provisions of Section 5, it is my opinion that you can promulgate rules and regulations to enable persons who are bona fide purchasers of separate ingredients, and who wish to have same mixed according to particular formulas for their own use, to have same mixed by any person designated by them, without that person being classified as a "manufacturer."

MISCELLANEOUS LICENSE TAX

Answering your third question, it is my opinion that the labeling requirements set forth in Section 1 should be applied in cases where the dealer mixing the materials is to be classified as a "manufacturer," but not when the one mixing the materials mixes same as a service separate and apart from the sale of the materials.

September 9, 1937.

RADIO STATIONS REQUIRED TO PAY—SEC. 1279. SUP. C. G. L.

Dear Sir:

In response to the request contained in your letter of September 4th for my opinion as to whether or not occupational or privilege license tax under Section 1279 (22), Supplement of the Compiled General Laws of Florida, 1927, can be collected from radio stations in Florida, I would say that the above mentioned law directs that the tax mentioned therein be paid; all laws are presumed to be valid until and unless declared otherwise by a court of competent jurisdiction. And although the Pensacola radio station has questioned the right of the State to collect this tax, due to the fact that the station is engaged in interstate commerce, you should enforce the provisions of this law until directed otherwise by some court of competent jurisdiction.

However, I have looked into this question very thoroughly and several Courts have held that a state had no right to impose a license or franchise tax on radio broadcasting sets or receiving sets. In this connection see the following cases:

WHITEHURST vs. GRIMES, Chief of Police, et al., 21 Federal 2nd., page 787, the decision by the District Court of the Eastern District of Kentucky.

KBL, Inc., vs. TAX COMMISSION OF WASHINGTON, et al., reported in 12 Federal Supplement 497, a decision from the District Court of the Western District of Washington.

STATION WBT, Inc., vs. PULNOT, Sheriff, et al., 46 Federal 2nd., 671, a decision from the District Court of the Eastern District of South Carolina.

July 15, 1937.

**REAL ESTATE BROKERS—LIABILITY OF HOLDER OF ACTIVE
BROKER'S REGISTRATION CERTIFICATE FOR
PAYMENT OF OCCUPATIONAL TAX**

Dear Sir:

This is in reply to your letter of July 7th enclosing correspondence from the Tax Collector of Polk County, and the holder of an active registration certificate from the Florida Real Estate Commission.

MISCELLANEOUS LICENSE TAX

You request my opinion as to whether or not one who holds such an active registration certificate from the Florida Real Estate Commission is subject to the payment of the occupational license tax under Section 1090, Compiled General Laws of Florida, 1927, even though he is not actively engaged in the real estate business. I call your attention to the following pertinent provisions of Section 4076, Compiled General Laws of Florida:

"* * * and any registered broker who desires to preserve his registration during a period while not engaged as a broker, may apply for and receive a certificate as a non-active broker. All other certificates shall be deemed active."

I also call your attention to Section 4087 (j), Compiled General Laws of Florida, 1927, which authorizes the Circuit Court to revoke or suspend the registration or any broker on his failure to establish and continuously maintain and register at least one office within this State, or failure to maintain and register such branch offices as may be required by law. It is clear that the Legislature intended that the holder of an active registration certificate should be conclusively presumed to be engaging in the real estate business, for the statute makes the failure continuously to maintain and register an office a ground for revocation of the registration.

In view of the statutes hereinabove set forth it is my opinion that a broker should either obtain a non-active certificate or be required to pay the occupational license tax under Section 1090.

July 21, 1937.

SEA FOOD—WHOLESALE AND RETAIL LICENSES TO DEALERS—
CHAPTER 17914 S. B. 352) OF 1937

Dear Sir:

I have your letter of the 9th inst., in which you state you are receiving a number of requests from disabled people for exemption licenses to sell fish, oysters and sea food. You make inquiry if you are authorized or required by law to issue a license without costs to disabled parties who are not veterans.

In reply, your attention is called to Chapter 17914 (S. B. 352) of 1937, which requires all wholesale and retail dealers in sea food to secure a license. You will note that Section 1 of said Act provides that no person shall engage in the business of wholesale or retail dealer until a license has been secured from the Supervisor of Conservation. You will note also that Section 3 of said Act repeals all laws in conflict.

In my opinion, there is no exemption from the license required of wholesale and retail dealers in sea food under said Act.

MISCELLANEOUS LICENSE TAX

December 17, 1937.

TAX ASSESSOR REQUIRED TO FOLLOW CHAPTER 18297 IN
MAKING ASSESSMENT ON AVERAGE STOCK OF MERCHANDISE
HELD IN STATE DURING PREVIOUS YEAR*Dear Sir:*

I acknowledge receipt of your letter of December 13, in which you quote from a letter received from one of the Tax Assessors of the State as follows:

"Here in my county I have some regular seasonal merchants. By that I mean firms that are here every year who bring their stock in after the first of the year, maintain their shops during the tourist season and then carry their stocks back north with them in April or May.

"Under the law, heretofore, I have been unable to reach these stocks for taxation as the firms had nothing taxable in the State on the first of January.

"I am wondering, however, whether, under the terms of Chapter 18297 of the 1937 Acts, these stocks will now be assessable on the basis of the average value of such stocks owned over a period of twelve months next preceding the first day of January of the year for which the assessment is made.

"To cite a concrete example: On January 1, 1937, this firm had no personal property in the State of Florida subject to assessment, and no assessment was made on them. On January 15th they came in with a \$15,000.00 stock. This stock inventoried \$12,000.00 on February 1st, \$10,000.00 on March 1st, \$8,000.00 on April 1st, and before May 1st it had been shipped back north. On the basis of an average for the 12 months, it would make an average value of \$3,700.00. However, on January 1, 1938, I again find they have no personal property in the state subject to taxation.

"Will I be justified in placing an assessment against this firm for 1938 on the basis of an average value of \$3,750.00 for 1937, or will the firm not be subject to taxation because of the fact they had no taxable personal property in the state on January 1, 1938.

"I am anxious to get this class of merchants, but on the other hand I do not care to make an assessment that I cannot defend, if necessary, and for this reason would appreciate your getting an opinion from the Attorney General covering this point as the same statement of facts exists with reference to similar stocks in other counties."

MISCELLANEOUS LICENSE TAX

You ask my opinion whether or not under the circumstances and conditions mentioned in the Tax Assessor's letter he is justified in making the assessment as based on the average stock of merchandise held during the year 1937.

Chapter 18297, Laws of Florida, Acts of 1937, amends Section 696 of the Revised General Statutes of 1920 which is the same as Section 896 of the Compiled General Laws of 1927, so as to provide a basis of valuation of stocks of goods, wares and merchandise for taxation purposes.

It was the purpose of this amendment to include those merchants who brought their goods in after the first day of January of each year and then carried the goods back out of the State before the first day of January of the next year, the illustration given in your quotation from the Tax Assessor's letter being a specific example. The Act in question provides that all personal property considered as goods, wares and merchandise commonly known as stock in trade be assessed for the purpose of taxation by the State, counties, cities, villages, towns and taxing districts at a valuation to be based upon the average value of such stock of goods, wares, and merchandise or stock in trade as held or owned over a period of the twelve months next preceding the first day of January of the year for which the assessment is made.

It is my opinion that he is not only justified, but that it is the duty of the Tax Assessor to follow the Act in question and make the assessment based on the average stock of goods held in the State during the previous year.

SECTION 10
MISCELLANEOUS—TAXATION

July 9, 1937.

**AUTO TRANSPORTATION COMPANIES REQUIRED TO PAY
MILEAGE TAXES**

Dear Sir:

I have your letter of July 1, 1937, in which you state:

"Section 3 of Chapter 18026, Acts of 1937, amends Chapter 14764, Acts of 1931, to provide that mileage taxes be paid by authorized carriers on a basis of 'every mile traveled for compensation by the motor vehicle of such auto transportation company over the public highways of the State.'

"Will you please give me your opinion as to whether or not the effect of this amendment is to make the tax apply only on mileage made when vehicles are actually transporting freight or passengers and to exempt the carriers for mileage made when the vehicles are empty?

"Heretofore the tax has been collected by this office 'on every mile traveled,' as provided in the original Act."

Section 3 of Chapter 18026 provides a mileage tax for every mile traveled for compensation by the motor vehicles coming under this Act over the public highways of the State. It is true that the amended section uses the words "for compensation," whereas the original section did not contain these words, but it is my opinion that the use of these words does not change the effect of the Act, as transportation companies, in fixing their rates and in contracting, take into consideration the fact that there must be a return trip.

It is possible that there could be occasions when the truck would not be traveling for compensation. For instance, if the truck originally chartered or engaged in hauling merchandise should break down before the end of the trip and it is necessary for the company to send another truck to substitute for the first, the duplicated mileage would not be miles traveled for compensation; but except in some emergency of this nature it is my opinion that you should continue to collect the tax under Chapter 18026 on the same basis as originally collected by you under Chapter 14764, Laws of Florida, Acts of 1931.

August 6, 1937.

**COUNTY COMMISSIONERS MAY SET MILLAGE AND MAKE LEVY
SUFFICIENT TO PAY OFF OUTSTANDING INDEBTEDNESS**

Dear Sir:

I am in receipt of your letter of the 6th ultimo, the body of which reads as follows:

MISCELLANEOUS—TAXATION

"Section 937 (2) Compiled General Laws of Florida, Permanent Supplement provides in part as follows:

Annual tax levies to defray expenses of County Government.—For outstanding indebtedness fund, not more than is necessary to pay such indebtedness and the interest thereon.

In the above quoted Section there are a number of funds which are limited to the amount of millage that may be set for each fund. In many counties this millage will not raise sufficient funds to carry on the function of that particular fund, so it has been a practice with the counties that in the event the General Fund which is limited by this law to a eight-mill levy does not receive sufficient revenue to meet the expense of this fund that the deficit be carried over into the next fiscal year and sufficient levy made for outstanding indebtedness to meet this deficit, for instance, if the General Revenue Fund should make a levy of eight mills, which should produce \$60,000,000, but the collections being poor in that county only produce \$40,000.00 and the expenditures of that fund amounted to \$50,000.00 then the Board of County Commissioners would carry over the \$10,000.00 deficit into the next fiscal year by making a levy for outstanding indebtedness in the amount of \$10,000.00.

Please give me your opinion as to whether or not it would be legal for the Board of County Commissioners to set a millage and make a levy sufficient to pay off the outstanding indebtedness of the county as above outlined."

In reply I beg to say that the law is not clear on the subject of your inquiry but under the ruling of the Supreme Court in the case of *Servaldi, et al. vs. State ex rel. Gibson, et al.*, 103 Fla. 902, 138 So. 380, it appears that it would be legal for the Board of County Commissioners to set a millage and make a levy sufficient to pay off the outstanding indebtedness of a County, as outlined in your letter.

January 6, 1937.

CONSULAR OFFICERS AND EMPLOYEES WHEN NOT EXEMPT

Dear Sir:

I am in receipt of your letter of the 31st, in which you ask the following question:

"Please give me your opinion as to whether or not consular officers and employees in the State of Florida who are engaged in private occupations for gain within the State are exempt from the gasoline tax levied by the State of Florida."

MISCELLANEOUS—TAXATION

The right to an exemption from taxation of a consular officer depends upon the treaty between the United States and the particular government from which such consular officer is accredited. In the above question you do not mention the particular consular officers involved, but from a copy of a letter from the Honorable R. Walton Moore, Acting Secretary of State, Washington, D. C., I note that he refers to a request from Mr. Eduardo D. Hernandez, Cuban Consul at Miami.

Article VI of the Convention between the United States and Cuba provides for various exemptions from national, state, provincial and municipal taxes of consular officers, including employees in a consulate. This same article, however, excepts therefrom those who are engaged in private occupations for gain within the State.

Article III of the same treaty provides that consular officers shall enjoy all the rights, immunities, privileges and exemptions granted by this Convention and those enjoyed by officers of the same grade of the most favored nation.

The letter of the Acting Secretary of State, Mr. Moore, states that Spain is probably the most favored nation in respect to exemption of consular officers from taxation. Article XV of the Treaty between the United States and Spain provides that all consular officers shall be exempt from all national, state, provincial, and municipal taxes except on real estate situated in or capital invested in the country to which they are commissioned. This same article, however, contains the following:

"If, however, they are engaged in professional business, trade, manufacture or commerce they shall not enjoy such exemption from taxes but shall be subject to the same taxes as are paid under similar circumstances by foreigners of the most favored Nation, and shall not be entitled to plead their consular privilege to avoid professional or commercial liabilities."

It is therefore my opinion that consular officers and employees in the State of Florida who are engaged in private occupations for gain within the State are not exempt from the gasoline tax levied by the State of Florida unless there is a particular treaty between the United States and a particular government from which the said consular agents are accredited granting such exemption.

March 8, 1937.

LEASED PROPERTY, ASSESSMENT OF

Dear Sir:

Mr. B. C. Stanley came to my office recently and discussed with me the question of whether or not tax assessors should segregate the improvements placed on leased property by the lessee for taxation purposes.

MISCELLANEOUS—TAXATION

It is my opinion that in the absence of statutory provisions or instructions the taxing officials must assess all improvements against the legal owner of the property and have therefore, no authority to assess the land to the lessor and the buildings placed on the land to the lessee.

Cooley on Taxation states:

"It is well settled that, unless it is otherwise provided by statute, leased property is taxable to the lessor and not to the lessee."

The Mississippi Supreme Court, in the case of *Robertson vs. Puffer Manufacturing Company*, 73 Sou. Rep. 804, quotes Judge Cooley as follows:

"By the owner of property for the purpose of assessment is meant the legal and not the equitable owner; * * * therefore, trustees having the legal title are properly assessed."

"For purposes of taxation the state is not required to adjust the equities between the contracting parties, the taxing board seeks the legal owner, and when he is found, the property is assessed to him. Any other rule, it seems to us, would place upon the taxing authorities an intolerable burden and lead to complications and entanglements which would be impossible of solution, and from which the most learned chancellor might shrink."

The Supreme Court of Minnesota, in the case of *La Paul vs. Heyward*, 129 N. W. 763, said:

"There is no provision of law by which an owner of land can pay the taxes, without at the same time paying the taxes upon all improvements located on the land. Under the laws of Minnesota all buildings and improvements are for the purposes of taxation considered a part of the real estate and must be assessed as such."

I find the above two cases cited to be typical of the cases decided by the courts of last resort in other states.

July 23, 1937.

POLK COUNTY PORT AUTHORITY—CONSTRUCTION OF CHAPTER
18811, ACTS OF 1937

Dear Sirs:

This opinion is addressed jointly to Honorable J. M. Lee as State Comptroller and to the Polk County Port Authority. The following questions relating to the proper construction of Chapter 18811, Acts of 1937,

MISCELLANEOUS—TAXATION

creating the Polk County Port Authority, have been referred to me for my opinion:

1. Will property of the Authority be subject to local taxation by the State, County or Municipality?

2. Will debentures of the Authority be legal investments for saving banks and trust funds in Florida?

Answering the first question, it is my opinion that such property of the Polk County Authority as may be used for strictly public purposes is exempt under the provisions of Section 897, Compiled General Laws of Florida, 1927.

Answering the second question, it is my opinion that the debentures proposed to be issued by the Polk County Port Authority under the provisions of Chapter 18811 are not legal investments for savings banks and trust funds in Florida. I predicate my opinion on Sections 6116 to 6123, Compiled General Laws of Florida, 1927, relating to the business of savings banks, and upon Chapter 17949, Acts of 1937, relating to the investment of trust funds. The proposed debentures are payable exclusively from revenues of the Polk County Port Authority and are not obligations whose payment can be provided for by general taxation. Under the laws relating to investments by savings banks and trustees, obligations of a district must have pledged for their payment the full faith and credit of the district in order to be legal investments.

March 10, 1938.

RAILROAD TAXES—CANCELLATION

Dear Sir:

I acknowledge receipt of your letter of recent date in which you say:

"I am enclosing herewith a resolution from Dade County seeking to cancel the railroad taxes levied against the Florida East Coast Railway, in pursuance with a contract by which the State Road Department took over certain right-of-way for a consideration that included the taxes.

"I am including copy of the Federal Court order confirming this contract.

"This Dade County resolution is identical with a resolution from Monroe County under which Mr. Lee refused to function until directed to do so by the Supreme Court (171 Sou. 524).

"In view of the Supreme Court order in the Monroe County case, the contract, and the Dade County resolution, shall we cancel all taxes shown on the assessment roll as levied against

MISCELLANEOUS—TAXATION

the above right-of-way, including the pro-rata of rolling stock and appurtenant supplies prorated to said mileage, under Section 966, Compiled General Laws, 1927?

"In addition to the enclosures mentioned above, I am also enclosing the entire file in this case in event you might want to check other things. Should you desire to discuss the technical angles of it while I am out of the city, please call Mr. Ervin who will be glad to come to your office at any time.

"This file, as you will note, shows that the State Road Department has carefully checked the mileage and I might add that we discovered a discrepancy in favor of the State, and the Railroad Company has sent its check for that to make up the difference."

The subject matter involved in your letter and the taxes therein sought to be cancelled are identical, from a legal standpoint, with those taxes which the Court ordered you to cancel in Monroe County in the case of *State ex rel. Monroe County et al. vs. Lee*, 171 So. Rep. 524.

As you will recall after the decision of the Court in that case, a petition for re-hearing was filed by the Attorney General's Office which was denied, a return was filed, and the Court issued a peremptory writ of mandamus, notwithstanding the said return. Under the ruling of the Court in this case, and as clearly as this question was presented to the Court, I think it would be futile to do other than advise you to comply with the request of the Dade County Commissioners and cancel all taxes upon this property shown on the assessment roll as levied on the right-of-way of the Florida East Coast Railway in Dade County, which was involved in the contract between the State Road Department, Monroe County, and the receivers of the Florida East Coast Railway.

June 9, 1937.

SHELL FISH PRIVILEGE TAX—TO BE SET ASIDE AS
PLANTING FUND

Dear Sir:

I am in receipt of your letter of the 3rd instant, referring to Section 1238, Revised General Statutes, now Section 1796, Compiled General Laws of Florida, 1927.

The particular part of said Section to which you refer is the last sentence thereof, reading as follows:

"All monies derived from this special privilege tax shall be set aside as a planting fund for the county in which collected and shall be spent in planting the public oyster and clam reefs."

MISCELLANEOUS—TAXATION

You make specific inquiry if your Department is required under said statute to set aside as a planting fund all monies derived from the said special privilege tax from the several counties in which collected.

Section 5 of Chapter 16178, Laws of Florida, Acts of 1933, now Section 1977 (105), Compiled General Laws of Florida, 1936 Supplement, reads as follows:

"Section 5. All monies in, amounts of money due and afterwards accruing to the various funds handled or controlled by the departments or offices abolished by this Act, shall upon the effective date of this Act, be transferred to one fund, designated as the State Conservation Fund, and shall be used exclusively for carrying out the provisions of this Act as the State Board of Conservation may direct. The said funds shall be paid out upon warrant of the Comptroller as other funds in the State Treasury are disbursed."

The last quoted statute, in my opinion, does not affect the above quotation from Section 1796, and it is my opinion that said quoted provision is still effective, and requires that the said special privilege tax shall be set aside as a planting fund for the county in which collected, and shall be spent in planting the public oyster and clam reefs.

May 17, 1938.

STATE PROPERTY NOT SUBJECT TO

Dear Sir:

I acknowledge receipt of your letter of April 13, in which you ask my opinion as to whether or not the Board of Control should pay State, County and municipal taxes assessed against certain property in the City of Tallahassee owned by the State under the Last Will and Testament of * * *. You state in your letter that the income from this estate is used for educational purposes. It will be observed from the other papers furnished me that the property is controlled by a state agency as successor Trustee under court order.

Under the law in this State, property owned by the State of Florida is not subject to taxes. While it is true that in this case the equitable title is in the State, actually the legal title is also, as the Trustees are members of the Board of Control. It has been held that the term "property" includes an equitable as well as a legal interest and that the word "owned" in an exemption statute is generally construed to comprehend equitable as well as a legal ownership. See COOLEY, TAXATION, Vol. II, Section 677.

It is therefore my opinion that the Board of Control should not pay City, County or State taxes on this particular property.

MISCELLANEOUS—TAXATION

July 1, 1938.

TAX ASSESSOR AUTHORIZED TO ASSESS TAXES FOR THREE PRECEDING YEARS

Dear Sir:

I acknowledge receipt of your letter of June 18, in which you state:

"Under Section 924, C. G. L., the Tax Assessor is authorized to assess on the current year's tax roll the taxes for three preceding years on lands which have been omitted from those rolls and escaped taxation from those years. Under this or any other Section is the Tax Assessor authorized to likewise assess on the current roll either tangible or intangible personal property the taxes for three preceding years."

In the case of *State vs. Beardsley*, decided July 7, 1922, and reported in 94 Southern 660, the Florida Supreme Court held that personal property could not be back assessed by the Tax Assessor in the absence of legislative authority and that no such law existed in 1919 for that purpose. The Court further said that Section 924, C. G. L., 1927, which authorized the back assessment of real property for a period of three years, did not apply to personal property.

Subsequent to that time, the Legislature passed Chapter 9180, Acts of 1923 (C. G. L., 1927, Section 925), which authorizes the back assessment of personal property the same as real property. Chapter 15789, Acts of 1931 (the Intangible Personal Property Act), Section 12, authorizes the intangible tax to be assessed and collected as other taxes are assessed and collected.

It is my opinion that under the two Acts above mentioned that the Tax Assessor is authorized to assess on the current year's tax roll the taxes for the three preceding years, either tangible or intangible personal property, that he finds has escaped taxation.

July 13, 1937.

TAX ASSESSORS SHOULD CONTINUE TO LEVY POLL TAXES

Dear Sir:

I acknowledge receipt of your letter of July 1, in which you quote as follows from a letter received from the Tax Assessor of Dade County:

"Chapter 18061, Acts of 1937, dispensing with the payment of a poll tax as a legal requirement for voting at any primary, special, general, or other election has been gone over by the writer and I would appreciate your obtaining an opinion from the Attorney General as to whether or not the passage of

MISCELLANEOUS—TAXATION

this Bill now makes it unnecessary for the Tax Assessor to assess a poll tax against all taxpayers appearing on the personal tax roll, as previously required.

"In other words I understand that this act does not abolish the poll tax except as a pre-requisite, but before assessing the poll tax against anyone I think that an opinion should be rendered by the Attorney General placing the responsibility of the assessment on us; otherwise we would be criticized for assessing the tax after the passage of the above mentioned bill."

Chapter 18061, Section 1, is as follows:

"That the payment of a poll tax shall not be required of any person otherwise qualified as an elector to vote at any primary, special, general or other election hereafter held in this State under the Constitution or any statutes passed in pursuance thereof."

Section 3 of the Act provides it shall take effect January 1, 1938.

This Act has nothing to do with the levying of a poll tax, its only effect being that after the first day of January it will not be necessary to pay your poll tax in order to vote. The Tax Assessors should continue the same policy they have followed in the past relative to the assessment of poll taxes.

July 13, 1937.

**TAX CERTIFICATES—COMPTROLLER REQUIRED TO REFUND
MONIES PAID FOR WHEN VOID—CHAPTER 18314**

Dear Sir:

I acknowledge receipt of your letter of recent date in which you state:

"By Chapter 18314 enacted by the recent session of the Legislature the provision of Section 1009 was broadened to include subsequent years taxes which are 'redeemed' in connection with the purchase of a tax certificate. Prior to the enactment of this law this office has held that no refund could be made upon taxes which had been redeemed against property against which there were tax certificates outstanding and which tax certificates were later declared void or invalid for a particular reason.

"The ruling of this office in this connection was upheld by the Supreme Court in the case of Palbicke vs. Lee as Comptroller but since the passage of the Act mentioned above claim has been filed with me for refund of the same taxes and which claim was the basis of the case mentioned.

MISCELLANEOUS—TAXATION

"Will you please advise me if under these circumstances I am now authorized to make a refund of the taxes in a case of this kind."

In the case mentioned in your letter, *Palbricke vs. Lee*, 172 So. 481, the Supreme Court in effect held that you were justified in refusing to refund the amount paid as the redemption of tax certificates which had been issued subsequent to the original basic tax certificate which was bought by the purchaser on the ground that Section 1009, Compiled General Laws, 1927, did not authorize such refunds.

Chapter 18314 broadens, as mentioned in your letter, the provisions of Section 1009 and provides that if the holder of any tax sale certificate "should pay, redeem or cause to be cancelled or surrendered, or should pay or redeem any subsequent or omitted taxes, in connection with an application for tax deed or in connection with any tax foreclosure proceedings, and if it should develop that said other tax sale certificate or any of said subsequent and omitted taxes are void for any reason, the clerk shall forward a certificate of such fact to the Comptroller * * * The Comptroller shall refund the amount received."

Section 6 of the Act is as follows: "The provisions of this Act shall apply to all tax sale certificates and subsequent and omitted taxes whether now outstanding or whether issued in the future; provided, however, that this act shall not apply to any tax sale certificate issued prior to January 1, 1913, or to any tax becoming delinquent prior to January 1, 1913."

It is my opinion that under Chapter 18314 you are authorized to refund taxes under the circumstances mentioned in your letter above quoted from.

October 7, 1937.

TAX CERTIFICATES—COMPTROLLER REQUIRED TO ISSUE
REFUNDS—CHAPTER 18314

Dear Sir:

I acknowledge receipt of your letter of recent date in which you enclose the court file in the case of * * * in which a court entered an order cancelling certain tax certificates in St. Lucie County.

You state in your letter that "The final order made by the court in this case is dated in 1931 and at the 1937 Session of the Legislature Senate Bill 515 (Chapter 18314) was passed, which would appear to authorize a refund on these certificates." You request that I advise you whether you are required to make the refund under the conditions set forth in said case.

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Chapter 18314, Laws of Florida, Acts of 1937, provides for a refund of taxes where the certificates are void. Section 6 of the Act provides that the provisions of the Act shall apply to all tax sales certificates and subsequent and omitted taxes whether now outstanding or whether issued in the future; provided, however, that the Act shall not apply to any tax sale certificate issued prior to January 1, 1913.

It is my opinion that Chapter 18314 was passed to broaden the provisions of Section 1009, Compiled General Laws; therefore, you are required to issue refunds on the facts set up in the case of *Bostwick vs. Elred*.

June 25, 1937.

TAX CERTIFICATES—CONSTRUCTION OF TAX REDEMPTION
LAW—CHAPTER 18296

Dear Sir:

I acknowledge receipt of your letter of June 16, 1937, in which you ask various questions relative to Chapter 18296. For convenience I will state the question and follow with my answer.

"1. Does this law apply only to tax certificates held by the State and which were two years old at the time it became a law or does it apply to not only the tax certificates mentioned above but also all taxes for subsequent years which are two years old or does it apply to tax certificates mentioned above with all subsequent years delinquencies down to and including the current year?"

The Act is not very clear whether it means certificates that were two years old at the time the Act took effect or any certificates that become two years old any time within the life of the Act, which is limited to two years from the date it takes effect, but after considering the purposes of the Act, which the declaration of public policy set forth in Section 1 shows to be to restore property which is now delinquent to the tax rolls, and after considering the provisions of Section 9, which among other things provides that at the expiration of two years from the date the Act shall become a law no action shall be brought for the purpose of litigating in any way the title of the State of Florida or its grantee to said land and the further provision in said section that within the two years from the date the Act shall become a law the fee-simple title to all lands against which there remain outstanding tax certificates which on the date the Act becomes a law are more than two years old shall absolutely vest in the State of Florida, it is my opinion that the Act applies only to tax certificates held by the State which were two years old at the time the law became effective, which was June 9, 1937, and all subsequent or omitted taxes.

MISCELLANEOUS—TAXATION

I will call your attention to the fact that if a certificate is sold at any time before the 1937 taxes are levied, which will be in the Fall of this year, the present year's taxes cannot be included, but if said certificate is sold after this year's taxes are levied then the 1937 taxes can be included in the sale.

"2. Can the request of a taxpayer for advertisement of delinquent taxes as provided by Section 2 contain as many different descriptions as the taxpayer wishes and can all such descriptions be included in one advertisement or can only one description be requested to be advertised and each description advertised in a separate advertisement?"

It is my opinion that the advertisement may contain as many different descriptions as the applicant wishes but that there be a separate sale of each separate description.

"3. When there is more than one certificate against a particular description does the request for the advertisement of the oldest certificate carry with it the subsequent certificates representing subsequent years taxes?"

Since the intent of the Act is to clear up the taxes against each particular piece of property and restore the same to the tax roll, it is my opinion that the request and advertisement of the oldest certificate will carry with it the subsequent certificates, together with omitted and subsequent years' taxes.

"4. Should the amount of taxes involved be shown in the advertisement or is it necessary merely to show that all delinquent taxes, regardless of the amount involved, will be sold?"

It is necessary under the Act for the Clerk to distribute the money received from the sale between the State and County in proportion to the amount of taxes levied by each. I deem it advisable that the Clerk show in the advertisement the description of the property, the certificate or certificates issued against the property, the amount of each, and the amount of omitted or subsequent taxes.

"5. If it is your opinion that more than one description can be included in an advertisement and sale, should not the delinquent taxes against each description be considered as a separate sale rather than where there are more than one certificate against a particular property, each certificate shall be considered as a separate sale?"

If the advertisement contains more than one description, each description or separate piece of property should be separately sold; I do not believe it advisable to sell separately the certificates against a par-

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ticular piece of property but to sell the oldest certificate held by the State, together with all subsequent certificates and assessed or omitted taxes.

"6. Will this act apply to certificates now held by the State which are less than two years old but which will become two years old before the Act expires as provided by Section 9?"

As answered in a previous question, the Act applies only to certificates now held by the State which are more than two years old on June 9, 1937, the day the Act became effective.

"7. Is the Clerk of the Court entitled to collect fees allowed him by law for publishing notice of the sale or is he required to wait until the sale is made before receiving fees allowed him by law for his services?"

Section 4 provides that the Clerk is authorized to require the applicant to deposit a sufficient amount to cover all advertising and other costs incident to the making of the sale, which deposit can then be credited upon the bid made by the applicant at the sale. It is my opinion that under this section the Clerk may collect fees allowed him for publishing notice of sale in advance.

"8. What is the minimum and maximum number of days required to elapse between the date of the first publication and the date of sale in order to comply with the publication for three consecutive weeks?"

Section 3 requires the Clerk immediately upon application to give notice that on a day and at an hour to be mentioned in the notice, not more than three weeks after the application, he will sell the tax certificates covering the lands to be described in the notice. It will be observed that under this section the Clerk must designate a day in the notice not more than three weeks from the date of the first publication of the notice.

Section 3 also requires the Clerk to publish the notice once each week for three consecutive weeks. The question arises as to whether this requires three publications or four publications. In *Myakka Company vs. Edwards*, 67 So. 217, the Supreme Court held that a chancery notice, under statute requiring publication "once each week for four consecutive weeks" required five publications. This decision was rendered prior to the decision of *Townsend vs. Brown*, 67 So. 869, where the Court said:

"The provision of Chapter 5596, Acts of 1907, that notice of tax sales shall be published 'once each week for five consecutive weeks' does not, in view of the terms, purpose and policy of the statute and the practical conditions to be met, require

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a publication covering a period of thirty-five days before the sale date. This statute requires a construction different from Chapter 4129, Acts of 1893, construed in *Myakka Company vs. Edwards*."

In the case of *Watson vs. Beacon Operating Company*, 154 So. 866, the Supreme Court held that a statute requiring "publication of notice of tax sale once each week for four consecutive weeks" was complied with by a publication of notice in four consecutive weekly issues of a newspaper appearing prior to sale, though less than twenty-eight (28) days elapsed between first publication and sale.

In view of these two decisions, I would say that the publication of notice in three consecutive weekly issues of the newspaper appearing prior to the date of sale would be sufficient. Therefore, in answer to the above question I will say that the maximum number of days required between the date of the first publication and the date of the sale would be twenty-one (21) days, while the minimum would be fifteen (15) days, or the next day after the third publication.

"9. Is the expense of sending notice by registered mail a part of the bid price or is it in addition to the bid price?"

Section 3 requires the Clerk to send notice by registered mail, so I would say that this expense would be included as a part of the bid price as the Clerk may include the amount necessary to send this notice as a part of the original deposit required by the Clerk under Section 4 of the Act, which said deposit in turn may be credited upon the bid made by the applicant.

"10. Should the fees allowed the Clerk be considered and taken from the amount of the sale or are his fees in addition to the bid price?"

It is my opinion that the fees allowed the Clerk for the making of the sale should be included in the original amount required to be deposited under Section 4 and be included in the bid price.

"11. Is there any requirement that the day of sale shall be the rule day or can they be sold on any day after three consecutive weeks' publication?"

There is nothing in the Act that requires the sale to be made on a Rule Day. In fact, the intent of the Act shows otherwise. It is therefore my opinion that they can be sold on any day mentioned in the publication.

"12. In case a bidder fails or refuses to deposit immediately the 25% of his bid can the delinquent taxes be again offered for sale at that time or must a new request be received and

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a new publication made before the delinquent taxes can be sold to the highest bidder?"

In the event the bidder fails to deposit immediately the 25% of his bid, I am of the opinion that no legal bid has been made and that the Clerk may at that time receive other bids for the property, but after the sale is adjourned then a new request must be received and a new publication made before delinquent taxes can be sold to the highest bidder.

"13. Where foreclosures by the State or County are pending are the accrued costs chargeable against the bid price or must the bidder pay these costs in addition to his bid?"

Section 3 provides that where foreclosure is pending by the State or County the purchaser shall pay to the Clerk the costs and fees actually expended or incurred by the plaintiff in said action. It is therefore my opinion that these accrued costs are in addition to the bid made by the purchaser.

"14. Since there is a conflict as to the date the 3% interest starts as provided by Sections 6 and 11, should the Clerk collect in case of redemption after sale to the highest bidder interest at the rate of 3% from the date of the certificate or the date of sale?"

Section 6 of the Act provides that if anyone other than the owner of the property purchases it at the sale, the owner shall have two years from the date of the sale of the certificate to redeem and that he shall have the right to redeem by the payment to the purchaser of the amount bid plus 3% per annum from the date of such certificate, together with all costs paid by the purchaser in connection with purchasing said certificate. It is my opinion that the intent of this section is to allow the purchaser the amount which he bid plus 3% for the use of his money and that the Legislature intended this 3% to apply only from the date he paid his money to the Clerk and certainly not 3% from the date of the certificate, as the certificate may be several years old and thus the interest rate, instead of being 3% per annum might amount to many times that amount, so I think what was really intended was that the 3% should apply from the date of the sale and not the date of the tax certificate. My opinion is further strengthened by the provisions of Section 11, which relates to the purchase of a certificate on a homestead, in which event, according to this section, the owner may redeem by the payment of the amount bid plus 3% from the date of sale of the certificate, so I would hold that the 3% interest starts from the date of the sale and not from the date of the certificate.

"15. Is the privilege of redeeming during the 10 year period as provided by Section 11 limited to those homesteads which were

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such when the delinquent taxes accrued or is it also extended to properties which were not homesteads when a part or all of the delinquent taxes accrued but are homesteads at the time the sale is made?"

It is my opinion that the homesteads status is determined as of the date of the sale of the certificates under this Act and not as of the time that the property was assessed or the original certificates sold.

"16. Can County and District bonds be used in paying that part of the sale price going to the County and District?"

It is my opinion that under the Act the certificates must be sold for cash and that bonds cannot be used in payment or satisfaction of the bids.

"17. There are two items included in the fact of each tax certificate which are not delinquent taxes, namely, the 5% commission to the Tax Collector as provided by Chapter 15798 and the expense of sale which consists of the amount paid the newspaper for advertising the law and 15c paid to the Tax Collector for issuing the certificate; are these two items to be included with the delinquent taxes when selling to the highest bidder or should they be collected as costs in addition to the bid price?"

A careful reading of the Act shows that it is the certificates that are being sold and that the face of the certificates includes the 5% commission allowed to the Tax Collectors by Chapter 15798 and other expenses of sale allowed by the State, so it is my opinion that the sale of certificates includes the 5% Commission and every other item of expense included in the face of the certificate and that the purchaser does not have to pay the commission and expense items in addition to the delinquent taxes proper.

"18. Will it be necessary for the Clerk of the Court, when a request for advertisement is received, to make a statement of all the delinquent taxes against that particular description so as to determine the rate upon which to pro-rate the proceeds and will it be necessary to show this amount in the advertisement."

I have answered this question in one of the other questions but will re-iterate that the Clerk should make a compilation of all the taxes due against such particular piece of property and include in his advertisement the amount of the taxes by years and certificates due against the property.

SECTION 11
TANGIBLE PERSONAL PROPERTY

November 15, 1937.

AUTOMOBILE TRAILERS NOT EXEMPT UNDER SECTION 13,
ARTICLE IX, CONSTITUTION

Dear Sir:

I acknowledge receipt of your letter of November 4, 1937, in which you state:

"I quote below from a letter relative to assessing automobile trailers:

"Under date of June 30th, the Supreme Court of this State reversed Judge H. F. Atkinson of Dade County in the above mentioned matter, ruling that motor vehicles both new and used, owned as stock in trade, are not subject to tax under the laws of this State. However, under date of August 11th, 1937, the Attorney General addressed a letter to your office advising that trailers are not exempt under Section 12 of Article 9 of the State Constitution, which provides exemption for industries.

"Therefore, I would appreciate your obtaining an opinion from the Attorney General regarding the assessment of trailers for state and county personal taxes. We have a great many trailers in Dade County owned as stock in trade, in addition to a great many owned by residents of this state and by non-residents who actually retain the trailers in Florida the year around.

"We are anxious to know if in the attorney general's opinion these trailers are subject to tax under the existing Florida law."

"Will you kindly advise me in the premises."

The Supreme Court of Florida, in the case of Nolan-Peeler Motors vs. Wood, 175 So. 523, held that motor vehicles are not subject to personal property taxes.

The constitutional amendment adopted in 1930, Section 13, Article IX, provides:

"Motor vehicles, as property, shall be subject to only one form of taxation which shall be a license tax for the operation of such motor vehicles, which license tax shall be in such amount and levied for such purpose as the Legislature may, by law, provide, and shall be in lieu of all ad valorem taxes assessable against motor vehicles as personal property."

I do not construe automobile trailers as motor vehicles and it is my opinion that they are not exempt from taxation under the above quoted constitutional amendment.

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October 5, 1938.

AUTO TRANSPORTATION COMPANIES, SUBJECT TO*Dear Sir:*

I acknowledge receipt of your letter of September 15, 1938, in which you state:

"I enclose herewith Brief prepared by prominent attorneys supporting the contention that Auto Transportation Companies are not subject to either an intangible tax or a tax upon their tangible personal property, which was submitted to me by Hon. A. H. St. John, Tax Assessor of Duval County, with the request that I secure your opinion as to the law."

I am not able to agree with the conclusion reached by the attorneys representing the transportation company.

Section 16 of Chapter 14764, Laws of Florida, Acts of 1931, contains the following:

"Provided further, that the mileage tax provided for in this section shall be in lieu of all other taxes and fees of every kind, character and description, state, county or municipal, except ad valorem taxes levied upon the property other than motor vehicles of such auto transportation companies and except the gasoline tax, and except the motor vehicle license tax as now or hereafter provided for by law."

The legislature is charged by Section 1 of Article IX of the Constitution to provide for a uniform and equal rate of taxation except it may provide for a special rate on intangible property.

Both the Intangible Act (Chapter 15789, Acts of 1931) and the taxes assessed against personal property are ad valorem taxes and clearly come within the proviso of Section 16 of Chapter 14764.

It is my opinion, therefore, that ad valorem taxes levied upon property other than motor vehicles of auto transportation companies are valid.

August 9, 1937.

IMPORTS NOT TAXABLE*Dear Sir:*

I acknowledge receipt of your letter of July 14, 1937, in which you enclose a copy of a letter relative to the assessment of sugar which has been imported by the Hershey Corporation and stored in their warehouse in Jacksonville. You ask if imports under circumstances of this kind are subject to taxation in Florida as personal property.

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In my opinion imports are not taxable while in a warehouse in the original unbroken packages waiting sale or delivery. In the case of *Brown vs. Maryland*, 6 Law Ed. 678, the leading case on this question, the Supreme Court of the United States said:

"It is sufficient for the present to say generally that when the importer has so acted upon the thing imported that it has become incorporated and mixed up with a mass of property in the country, it has perhaps lost its distinctive character as an import and has become subject to the taxing power of the State; but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty upon imports to escape the prohibition in the Constitution."

July 13, 1937.

TAX ASSESSORS TO MAKE ASSESSMENTS—CHAPTER 18297
ACTS 1937

Dear Sir:

I acknowledge receipt of your letter of July 1, 1937, in which you quote as follows * * *:

"I have recently gone over Chapter 18297, Acts of 1937, pertaining to the assessment of personal property, and I would suggest that an opinion be rendered by the Attorney General's office relative to the effect of this Bill upon the assessing procedure in the State prior to its passage. In other words, it is the writer's opinion that this Bill allows the Tax Assessors of the various counties, cities and etc., in the State to assess tangible personal property on the average inventory of the twelve months immediately preceding the date of assessment, providing however that where a return is not filed and the information is not submitted showing the average inventory, then the assessor could proceed as previously, assessing the property at his opinion of the fair value as of the date of assessment, January 1st, for it would not be feasible for the assessors of the State to accept the responsibility of demanding the average inventory, neither do I feel that it is the intent of the law.

"However, I think that ruling would be appreciated by the Assessors of the State, and I am therefore submitting it to you with that in mind."

Chapter 18297 amends Section 896, Compiled General Laws, 1927, by providing that all personal property assessments shall be based upon the average value of such stock of goods, wares and merchandise or

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stock in trade as held or owned over a period of twelve months next preceeding the first day of January of the year for which the assessment is made.

It is my opinion that the tax assessors of the State should follow the letter and spirit of this Act. In the event no return is filed, then I think it is the duty of the assessor to use information secured from the owner or otherwise to determine the average and carried by the taxpayer during the previous twelve months.

CHAPTER X

MISCELLANEOUS

January 9, 1937.

BONDS—AUTHORITY OF GOVERNOR, COMPTROLLER AND TREASURER TO EXCHANGE BONDS FOR REFUNDING BONDS—
SECTIONS 173 TO 176, C. G. L., 1927, SECTIONS 143 TO
146, R. G. S., 1920, AS AMENDED BY CHAPTER
14653, ACTS OF 1931

Dear Sir:

You state that the Governor, Comptroller and Treasurer hold City of Clearwater 5% Municipal Street and Improvement bonds to the aggregate par value of \$15,000.00, pursuant to the provisions of the statute above referred to. Claims on these bonds was filed in the United States District Court for the Southern District of Florida, in Municipal Bankruptcy proceedings instituted by the involved municipality. You state it to be your understanding that the Municipal Bankruptcy Act has been declared invalid by the Supreme Court of the United States, as impairing the obligation of the contract of such securities.

You wish to be advised whether or not, in conjunction with the Governor and Comptroller, you have authority to agree to a refunding plan proposed by the City of Clearwater. This refunding plan contemplates an exchange of the securities held for refunding bonds, on the basis set forth in a contract dated Aug. 24, 1936, between said city and certain of its bondholders, a copy of which contract you have transmitted to me. It appears from the provisions of the contract in question that the refunding bonds proposed to be issued bear a less rate of interest than do the original bonds proposed to be refunded.

In line with my opinions previously expressed on several occasions, I have to advise that you have no authority to agree to such a refunding program and to make the exchanges contemplated. Because of the view taken by our Supreme Court, to the effect that municipal obligations of this character are payable from an inexhaustible source of revenue; that a debtor is presumptively solvent until declared insolvent by a court of competent jurisdiction; that it cannot be presumed that the exercise, by said municipality, of the power of taxation pledged, will not eventually result in the production of funds sufficient in amount to pay in full its assumed obligations, for the payment of which its power of taxation was irrevocably pledged, I regret to advise that I am unable to say that you have the authority in question. There appears to be no specific authority in the law for such an exchange and, under the view of our Supreme Court, it does not seem to me that there could be, in the face of its decision, any assumption that the municipality in fact is unable to pay the full amount of its obligations. Bearing this in mind,

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whatever the situation in fact, the exchange would, in theory, result in a settlement of the bonds held by you for less than the full par value thereof, in the teeth of the conclusive presumption that the full face thereof could be collected.

February 8, 1938.

BONDS—AUTHORITY OF STATE TREASURER TO EXCHANGE
BONDS TAKEN IN SETTLEMENT OF ACCOUNTS WITH
BANKS IN LIQUIDATION, FOR REFUNDING
BONDS—CHAPTER 17756, ACTS OF 1937

Dear Sir:

Your letter of January 31, 1938, describes certain county and city bonds originally held by you as collateral security for the repayment of bank deposits, and subsequently taken over by you in partial settlement of accounts with banks in liquidation, pursuant to Chapter 14653, Acts of 1931. You state that the counties and cities have issued refunding bonds to replace the bonds you describe, and you ask my opinion as to whether or not you are legally authorized to exchange these bonds for a like amount of refunding bonds bearing interest at the same, or a lower rate, with adjustment of accrued interest on the bonds you hold, by (1) payment thereof in full; (2) payment of a portion thereof in full; (3) acceptance of refunding bonds therefor, in accordance with the provisions of the various refunding programs.

Chapter 17756, Laws of Florida, Acts of 1937, authorizes the exchange of the bonds you hold, for refunding bonds issued to take their place and stead, provided that, prior to such exchange, the Governor, Comptroller and Treasurer shall have first determined that they consider it to the best interests of the State of Florida to accept such refunding bonds.

I am, therefore, of the opinion that you are authorized to make such exchanges, if the above mentioned determination has been made prior to the exchange.

November 26, 1938.

BONDS—AUTHORITY OF GOVERNOR, COMPTROLLER AND TREASURER TO ACCEPT REFUNDING BONDS FOR BONDS HELD
IN SUSPENSE ACCOUNT—CHAPTER 17756, ACTS OF
1937 AND CHAPTER 14653, ACTS OF 1931

Dear Sir:

This is in reply to your letter of November 10, 1938, enclosing opinion of * * *, dated August 26, 1938, concerning Town of Perry refunding

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bonds, and copy of minutes of meeting of the Governor, the Comptroller and the Treasurer, under Chapter 14653, Acts of 1931. It appears that at this meeting the officials above named agreed to accept refunding bonds of the Town of Perry for two bonds held by them in a suspense account. You ask for my opinion as to the legality of such decision.

I am of the opinion that under the provisions of Chapter 17756, Laws of Florida, Acts of 1937, the above named officials are authorized to accept refunding bonds for bonds held by them. See opinion of my predecessor dated August 16, 1937, pertaining to the above mentioned Act. On November 3, 1938, I advised the Board of Education, by letter, that the Town of Perry refunding bonds had been approved by Thomson, Wood & Hoffman, nationally recognized bond attorney, and that the Board of Education was justified in relying upon their opinion as to the validity of the bonds. The Governor, Treasurer and Comptroller are likewise justified in relying upon the opinion of Thomson, Wood & Hoffman.

February 17, 1938.

BONDS—CANCELLATION RECEIVED BY TREASURER UNDER
CHAPTER 15054, ACTS OF 1931

Dear Sir:

Your letter of February 16, 1938, encloses a certified copy of a resolution of the Board of County Commissioners of Palm Beach County, authorizing and directing you to cancel certain bonds and coupons received by you pursuant to the provisions of Chapter 15054, Acts of 1931, and asks to be advised as to whether or not you may comply with this resolution.

Section 7 of Chapter 15054, Acts of 1931, provides that the State Treasurer shall keep and hold the bonds forwarded to him for the account of the parties in interest, as custodian thereof. It is my opinion that said Act does not authorize you to cancel the bonds received pursuant to it. I know of no other law authorizing the cancellation of these bonds, and I am, therefore, of the opinion that you are not authorized to comply with the provisions of the aforementioned resolution.

October 21, 1937.

BONDS—CHAPTER 18679, ACTS OF 1937—MARTIN COUNTY

Dear Sir:

Your letter of October 15th * * * requests my opinion as to what action should be taken pursuant to this resolution.

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Chapter 18679, Acts 1937, provides in substance that the Board of County Commissioners of Martin County be authorized to adopt a resolution providing for the cancellation of all bonds received by Martin County officials for payment of taxes; authorizes the Clerk of the Circuit Court and any other custodian of any such bonds, to deliver them to the Board of County Commissioners; and provides that after such delivery has been made, the Clerk of the Circuit Court and the Board of County Commissioners shall destroy such bonds by burning them. The resolution describes certain bonds of Martin County and Special Road and Bridge Districts located therein, states that same are held by the State Treasurer pursuant to Chapter 15054, Acts of 1931, and directs the State Treasurer to cancel these bonds and deliver them to the Board of County Commissioners, for destruction, as provided in the above mentioned House Bill.

If the bonds described were received by the State Treasurer, pursuant to Chapter 15054, Acts of 1931, I am of the opinion that you are legally authorized to comply with the provisions of said resolution by cancellation and delivery to the Board of County Commissioners. I express no opinion as to the constitutionality of Chapter 18679, as I am of the opinion that administrative officials are authorized to comply with the provisions of a legislative enactment unless and until same has been declared unconstitutional by a court of competent jurisdiction.

August 16, 1937.

BONDS—CHAPTER 18888, ACTS OF 1937 LEGISLATURE—
ST. LUCIE COUNTY

Dear Sir:

I have your letter of July 27, 1937, * * * wishing to know if arrangements can be made to cancel bonds taken in for taxes pursuant to Chapter 18888.

Your letter does not state what bands in your possession were taken in for St. Lucie County taxes.

Your authority with respect to bonds taken in for St. Lucie County taxes, is limited to that authorized by Chapter 18888. Section 2 of it authorizes the Treasurer to deliver Ft. Pierce Inlet District bonds taken in for taxes of the district, to the Board of Commissioners of the Ft. Pierce Port district, uncanceled. The same section provides that upon receipt thereof, the Board shall cause same to be cancelled.

Section 3 provides that the State Treasurer shall credit county bonds and coupons, used in payment of St. Lucie district and county taxes, with the amount of such taxes as payments on said bonds and coupons.

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This section also provides that the Treasurer shall retain the remainder of such bonds and coupons as security for any State taxes paid with the same.

I am of opinion that you are legally authorized to comply with the provisions of Sections 2 and 3 of the above Act, provided you have in your possession bonds and coupons which come within the purview of such Act. I express no opinion as to the constitutionality of this Act, as I am of the opinion that administrative officers are legally authorized to comply with the provisions of a legislative Act, unless and until same has been declared unconstitutional by a court of competent jurisdiction. Enclosures are returned herewith.

August 16, 1937.

BONDS, REFUNDING—CLEARWATER

Dear Sir:

I have your letter of July 30th, to which is attached letter dated July 29th, from the City Attorney of Clearwater, to you, also printed copy of modified refunding contract, Chapter 17756, Acts of 1937 Legislature, and form letter of transmittal, authorizing exchange of bonds for refunding bonds.

You wish to be advised if the Board is authorized, under this Act, to make exchange of the \$15,000 City of Clearwater Street Improvement bonds referred to in Mr. * * * letter.

Chapter 17756, Acts of the 1937 Legislature, authorizes the Governor, Comptroller and Treasurer to exchange bonds of any political subdivision of the State of Florida, for refunding bonds, to take the place of the bonds now held by the Governor, Comptroller and Treasurer, acquired, owned and held by virtue of the Compiled General Laws of Florida, Section 176, as amended by Section 2 of Chapter 14653, Laws of Florida, Acts of 1931. As a prerequisite to the making of the exchange, the Governor, Comptroller and Treasurer are required to make a determination that they consider it to the best interest of the State to accept such refunding bonds.

Compiled General Laws of Florida, 1927, Section 176, as amended, provides that the Governor, Comptroller and Treasurer sell at public or private sale, bonds or securities deposited in the State Treasurer's office as collateral security for the deposit of any public funds, whenever the bank fails or refuses to pay any check drawn by the Treasurer on that bank. In lieu of sale as aforesaid, this section authorizes the Governor, Comptroller and Treasurer, when they consider it to the best interest of the State, to take such collateral securities in settlement of the account with a bank in liquidation, upon such basis as may be agreed upon.

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This section further directs that such assets, so acquired, shall be carried in a suspense account. Bonds obtained by this method may, pursuant to the provisions of Chapter 18888, be exchanged for refunding bonds, provided that prior to the exchange of such bonds, the Governor, Comptroller and Treasurer shall determine that they consider it to the interest of the State of Florida to accept such refunding bonds.

If the \$15,000 of Clearwater bonds were acquired by the Governor, Comptroller and Treasurer, pursuant to the provisions of Compiled General Laws of Florida, 1927, Section 176, as amended, you are authorized to exchange them for a like amount of refunding bonds of the City of Clearwater, in accordance with the conditions of exchange set forth in the letter of transmittal, provided that the Governor, Comptroller and Treasurer have made the above mentioned determination prior to the actual making of the exchange.

September 15, 1937.

BONDS—CHAPTER 18039, ACTS OF 1937—EXCHANGE OF BONDS FOR
REFUNDING BONDS—DISPOSITION OF BONDS RECEIVED
PURSUANT TO CHAPTER 15054, ACTS OF 1931—
PASCO COUNTY

Dear Sir:

Your letter of September 7th encloses two resolutions of the Board of County Commissioners of Pasco County, dated September 1, 1937, and requests advice as to what action should be taken with respect thereto.

Chapter 18038, Acts of 1937, provides that the custodians of bonds taken in payment of taxes, in counties having a population of between 11,143 and 11,413, according to the last preceding State census, are directed to exchange such bonds pursuant to any plan of readjustment approved by the County Commissioners of such counties. This Act provides also that after such bonds had been exchanged for refunding bonds, interest may be received thereon by the custodians, and funds so received shall be prorated between the various taxing units and funds which have an interest in the bonds accepted in payment of taxes. The custodian is authorized to consider the bonds received to any particular date, as a closed fund for liquidation purposes, and the custodian is also authorized to sell bonds to the interest and sinking fund of the issue held, at a price which, when added to the interest received, will produce a sum sufficient to discharge at par the taxes paid through the acceptance of such bonds for taxes. This Act is applicable to Pasco County.

One of the aforementioned resolutions authorizes and directs the State Treasurer to exchange certain described bonds and coupons of Pasco County and its road and bridge districts, held by him as custodian

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pursuant to Chapter 15054, Laws of Florida, Acts of 1931, for refunding bonds, under a refunding plan previously certified to the Board of Administration. Attached to the resolution is a form of letter of transmittal, setting forth the terms and conditions of the exchange.

Assuming that the resolution contains an accurate description of bonds of Pasco County, and its special road and bridge districts, accepted in payment of taxes, pursuant to Chapter 15054, Acts of 1931, I am of the opinion that you are authorized to make such exchange in accordance with the aforesaid Act and resolution.

The other resolution authorizes and directs the State Treasurer to establish a closed account for liquidation purposes, of the bonds described in the previously mentioned resolution. It also directs the State Treasurer to calculate the share which each fund shall be entitled to receive from a liquidation of such bonds, and directs that all funds received from the liquidation thereof, shall be ratably divided between the respective funds. In addition, the resolution directs the Board of Administration to purchase the securities contained in the aforementioned closed account, at a price of par, less the amount of interest previously received thereon.

I am of the opinion that you are authorized to comply with the provisions of this resolution by establishing the aforementioned closed account, collecting the interest on refunding bonds, and selling securities in the account to the Board of Administration at the price set forth in the resolution, at such times as the Board of Administration may offer to purchase them. You are also authorized to determine the pro rata share of each fund, and to distribute the proceeds derived from the liquidation of the account in accordance therewith. I have been orally advised by the Comptroller's office that the share of each fund in the account is capable of definite ascertainment.

I express no opinion as to the constitutional validity of Chapter 18038, as I am of the opinion that an administrative officer is authorized to comply with the provisions of a legislative act, unless and until same has been declared unconstitutional by a court of competent jurisdiction.

January 18, 1938.

BONDS—PORT OF PALM BEACH DISTRICT—AUTHORITY OF STATE
TREASURER TO DELIVER PUSUANT TO CHAPTER 17089,
ACTS OF 1935

Dear Sir:

Your letter of January 17, 1938, encloses certified copy of a resolution of the Board of Commissioners of Port of Palm Beach District, which

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resolution requests the State Treasurer to deliver to the Board of Commissioners certain described bonds and coupons issued by Lake Worth Inlet District. You ask to be advised as to whether or not you have authority to make the requested disposition of such bonds, which were received under the provisions of Chapter 15054, Acts of 1931.

Section 5 of Chapter 17089, Laws of Florida, Acts of 1935, authorizes the State Treasurer to deliver to the Board of Commissioners all bonds and interest coupons of the District, in his possession, pursuant to any law of the State of Florida providing for the payment or redemption of taxes of Lake Worth Inlet District, with bonds.

I am of the opinion that you are authorized to deliver to the Board of Commissioners of Lake Worth Inlet District any bonds and interest coupons received by you pursuant to Chapter 15054, Acts of 1931. I express no opinion as to the constitutionality of said Chapter 17089, as I am of the opinion that an administrative officer is authorized to comply with the provisions of an act of the Legislature, unless and until same has been declared unconstitutional by a court of competent jurisdiction.

November 2, 1937.

BONDS—TRANSFER OF SINKING FUND BALANCES TO ASSETS OF THE REFUNDING ISSUES AND ALSO TRANSFER OF OLD SINKING FUND BALANCES FOR OTHER PURPOSES.

Dear Sir:

I acknowledge receipt of your letter of recent date in which you say:

"Numerous counties and districts within the counties are refunding old bond issues and in the refunding program, in a great many cases, accumulated balances as well as future income for the original bond issue are not taken into consideration as part of the assets of the refunding issue.

"In these cases can the accumulated fund as well as funds derived from future collections for the old issue be transferred and become a part of the assets of the refunding issue or can these assets of the particular issue which were not taken into consideration in the refunding program be transferred and used for any other purpose."

I have heretofore ruled that sinking funds and other money collected for the payment of interest or principal on bond issues are trust funds and cannot be used for other purposes.

It is my opinion that where a sinking fund balance has accumulated and all of the old bondholders have agreed to a refunding program,

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that then this balance should be included as a part of the assets of the refunding issue; but I do not believe that this fund should be transferred as long as all of the old bondholders have not agreed to accept and have accepted the refunding bonds.

I do not think that the sinking fund balances which were collected from the taxpayers for the payment of the bonds in question should be transferred and used for any other purposes.

July 10, 1937.

BETTER BUSINESS ASSOCIATION OF FLORIDA—NO AUTHORITY
TO PAY EXPENSES OF COMMITTEE AFTER ADJOURNMENT
OF LEGISLATURE

Dear Sir:

This refers to your recent inquiry concerning House Resolution No. 49 of the 1937 Legislature, Regular Session, and particularly with reference to the authority of a Special Committee appointed under said resolution to continue to function since the adjournment of the Legislature and whether or not expenses incurred by said Committee since such adjournment may properly be paid.

The said Resolution adopted May 15, 1937, reads as follows:

"BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF FLORIDA that a committee of three members of this House be appointed by the Speaker for the purpose of investigating the conduct, operation and activities and other affairs of the Better Business Association of Florida, fully and completely in every matter and particular; that said Committee shall have authority to sit at any time and at any place or places in the State of Florida, and shall have authority to summons witnesses and compel the production of documents and records, and shall have authority to employ Certified Public Accountants, as many as shall be necessary, for the examination and audit of all records and books of account of the said Better Business Association; and that said Committee shall report to this House before the final adjournment of this session, the evidence taken by the Committee with its recommendations."

On the same date and before adoption it was amended to change the number of the Committee from three to five members, and was also amended by striking out the following words at the end of said resolution: "and that said committee shall report to this House before the final adjournment of this session, the evidence taken by the committee with its recommendations."

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You will note that the said resolution was adopted on the 15th day of May, long prior to the close of the legislative session. While the Legislature or one branch of it would doubtless have the authority by proper resolution to constitute a Committee to act while the Legislature is not in session, the normal functions of legislative committees, or committees of either branch of the Legislature, contemplate action only during the session thereof. While Resolution No. 49 provides that the Committee shall have authority to sit at any time or place or places in the State of Florida, it fails to state specifically that the appointment or functioning of the Committee is to extend beyond the close of the legislative session at which it was appointed. In the absence of a specific indication that the life of the Committee is to continue beyond the end of the session, I am of the view that the powers of that Committee died with the adjournment of the House of Representatives and that you would not be authorized to disburse funds in payment of any expenses incurred by its individual members subsequent to such adjournment. In this connection, I quote you from 25 R.C.L. 384, States, 16, as follows:

"POWERS OF LEGISLATIVE COMMITTEES.—It is a rule of general application that committees appointed by the legislature have no power to act during the recess of the legislature unless they are specially authorized to do so, and that a legislative branch has no power, by its independent action, to raise a committee of investigation, with power to sit during the recess of the legislature after the close of the session of the legislature. * * *"

See also the following citations under said Section: *Ex Parte Caldwell*, 61 W. Va. 49, 55 S. E. 910; 11 Ann. Cas. 646 and note, 10 L.R.A. (N. S.) 172.

August 11, 1938.

**BUILDING AND LOAN ASSOCIATIONS—INVESTMENT OF FUNDS
IN REAL ESTATE MORTGAGES INSURED BY FEDERAL
HOUSING ADMINISTRATION**

Dear Sir:

This is in reply to your letter of August 8th which reads in part as follows:

"We have an inquiry from Mr. Henry E. Moore, Counsel for the Federal Housing Administration, in which he requests to be advised as to whether or not the State of Florida can charter through the Comptroller's office a Building and Loan Association which would have for its prime purpose, insofar as investments are concerned, the investing of its funds in mort-

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gages on real estate insured by the Federal Housing Administration, and Mr. Moore further inquires as to whether or not these mortgages so acquired might from time to time be sold."

The original purpose of Building and Loan Associations was to lend money to persons who contracted to purchase stock in an Association and thereby become members. This purpose was predicated upon the theory that the earnings from the stock would greatly diminish the actual cost of the loans to the borrowing members. Provisions are incorporated in the laws relating to such Associations seeking to guarantee the achievement of this purpose by preventing a negotiation of notes and mortgages executed to the Association by members thereof. I refer to the following provisions of Section 6183 (5), Compiled General Laws, Permanent Supplement:

"Third: Evidences of indebtedness taken by any building and loan association for any loan made by it to its members shall not be negotiable in form, and whatever be its form such indebtedness shall be nonnegotiable in law and no such debt or evidences shall be assignable or transferable in any manner, except as otherwise provided in this law. (Ch. 15908, Acts 1933, Section 6; Ch. 16844, Acts 1935, Section 2.)"

Recent legislation has enlarged the power of building and loan associations to make loans. The following is from Section 6183 (2), Compiled General Laws, Permanent Supplement:

"Fifth: In case there is not sufficient demand for loans *on the part of stockholders on real estate mortgages or the stock of the association, which are acceptable to the board of directors*, any association shall have the power to lend its funds upon or purchase first mortgages upon improved real estate, provided, the loans secured by the mortgage purchased or accepted as collateral does not exceed sixty per cent. of the fair value of the real estate mortgage, and also to lend its funds upon or invest in the obligations of the United States, State of Florida, any county or municipality of the State of Florida, any Federal Home Loan Bank or the Home Owners' Loan Corporation, and also to lend its funds upon or purchase the stock of promissory notes of any other domestic building and loan association, or Federal savings and loan association, doing business in the State of Florida." (Italics ours.)

The following is from Chapter 17980, Laws of Florida, Acts of 1937:

"Section 2. It shall be lawful for banks, savings banks, trust companies, *building and loan associations*, insurance companies, trustees, guardians, executors, administrators, and other

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fiduciaries, the State of Florida, and its political subdivisions, all institutions and agencies thereof (with the approval of the officials or boards having supervisions or management of same) to invest their funds and the monies in their custody or possession, *eligible for investment, in notes or bonds secured by mortgage or trust deed insured by the Federal Housing Administrator, and in debentures issued by the Federal Housing Administrator, and in securities issued by national mortgage associations.*" (Italics ours.)

Upon consideration of the Statutes above referred to, it is my opinion that building and loan associations may now be chartered to exercise the following powers with regard to investments:

1. They may lend money to members to purchase stock, the loan to be evidenced by nonnegotiable notes and mortgages.

2. Upon ascertaining that there is no demand for loans on the part of stockholders which are acceptable to the Board of Directors, the associations may lend the money upon or purchase first mortgages upon improved real estate provided that the amount of the loan does not exceed sixty per cent of the fair value of the real estate mortgage.

3. Under the conditions stated in "2" (supra), such associations may make loans secured by notes and mortgages insured by the Federal Housing Administrator.

It is further my opinion that the notes and mortgages acquired under "2" and "3" (supra) may from time to time be sold.

February 22, 1937.

CHILD LABOR AMENDMENT TO FEDERAL CONSTITUTION

Dear Sir:

This is in reply to your letter of February 10th in which you inquire concerning the procedure to be followed by the Legislature in ratifying the proposed amendment to the Federal Constitution. You inquire particularly concerning the form of Concurrent Resolution No. 20 introduced by you in the House of Representatives in the 1935 session. You also inquire concerning the distinction between Joint Resolutions and Concurrent Resolutions.

There seem to be very few authorities and court decisions pointing out the distinction between Concurrent Resolutions and Joint Resolutions. The following is a definition of a Joint Resolution which is set forth in Words and Phrases, Third Series, volume 4, page 596:

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"If a resolution originating in one house of the Legislature is passed by that house and is then sent to the other for its concurrence, and is passed by it, signed by the presiding officer of each house and approved by the Governor, it is a "joint resolution" as that term is used in the Constitution and the joint rules of the Legislature. *Oklahoma News Co. vs. Ryan*, 224 P. 969, 971, 101 Okla. 151."

The following is headnote 1 of the case of *Kelly vs. Secretary of State*, reported in 112 *Northwestern Reporter*, page 978:

"Though denominated a "concurrent" resolution, a resolution by the state Senate and House of Representatives that the question of nominating United States senators, etc., by direct vote of the electors be submitted at an election, and requiring the Secretary of State to certify the same to the several county clerks and give notice to the sheriffs, etc., is a bill or joint resolution, within Const. art. 4, §19, providing no bill or joint resolution shall become a law without the concurrence of a majority of all the members elected to each house."

Article III, Section 17 of the Florida Constitution provides that the vote on final passage of every bill or joint resolution shall be taken by yeas and nays, to be entered on the journal of each house and must be signed by the presiding officer of the respective houses, by the Secretary of the Senate and the Clerk of the House of Representatives.

Article V of the Constitution of the United States provides, in part, for the ratification of proposed amendments by "the legislatures of three-fourths of the several States." This would seem to require the ratification to be action of the Legislature as such, which purpose would be served by a joint resolution. I find, however, that the Twentieth Amendment to the Federal Constitution was ratified by the Florida Legislature by means of a concurrent resolution similar in form to the resolution proposed by you. See pages 13 and 14 of the Journal of the House of Representatives for the 1933 session. This is probably a precedent which you would be justified in following, inasmuch as no serious question has ever been raised as to the validity of the ratification of the Twentieth Amendment. As a matter of fact, it would be my opinion that the Federal Courts would refuse to look behind any certification of a State that it has ratified an amendment to the Federal Constitution.

Although I have been unable to find any satisfactory definition of a concurrent resolution, the nature of such a resolution is disclosed by its name. It is, in reality, two identical resolutions, adopted at the same time by both houses of the legislature. As the Supreme Court of Michigan held in the *Kelley* case, hereinabove referred to, it seems to make little

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difference what the name may be, so long as the resolution is adopted in accordance with the provisions of Article III, Section 17 of the Florida Constitution.

November 2, 1938.

**CORPORATIONS—FILING INFORMATION AND OBTAINING
CRIMINAL SERVICE ON**

Dear Sir:

In reply to your favor of October 31st, inquiring as to the proper method of obtaining criminal service on a Florida Corporation, I would state that I find no statute particularly applicable to serving criminal process on a corporation. I am, therefore, of the opinion that a summons should be issued and served upon the proper officer of the corporation as provided by Section 4233, Compiled General Laws, 1927. You will see from the provisions of this Section of the statutes that the summons is made to the proper officer, and permits him to summon the corporation to appear. For further treatment of this subject see: 14-A, Corpus Juris, page 879.

January 6, 1938.

COUNTY CONVICTS—HIRING OUT

Dear Sir:

I am in receipt of your letter of the 23rd ultimo enclosing communication from Messrs. * * * in which inquiry is made as to whether the Board of Commissioners of Indian River County may let the County convicts to the Indian River Mosquito Control District under a plan recited, which is in effect a hiring out of said convicts.

Chapter 9203 of 1923, now Sections 8549 to 8552, Compiled General Laws of Florida, 1927, which appears to be the last Act on the subject, empowers the County Commissioners to require all County convicts under sentence, confined in the jail of their respective counties for any offense, to labor upon the public roads, bridges, farms or other public works owned and operated by the County.

The above mentioned plan of letting out such convicts would not appear to be in accordance with the provisions of the statute above mentioned.

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December 1, 1937.

DECEASED PERSON—DISPOSITION OF PROPERTY

Dear Sir:

I have at your request read the correspondence relating to the disposition of property found on the body of persons deceased, where the coroner holding inquest has turned over to the Clerk of the Circuit Court such property, but has failed to publish the name and description of the deceased and the amount of money, property, or other valuables found in his possession.

If no one has qualified as Administrator, the Sheriff of the County should proceed under the provisions of Sections 5514 and 5515 of the Compiled General Laws of Florida.

December 15, 1938.

DRAINAGE DISTRICT—BOARD OF COMMISSIONERS CAN APPOINT
MEMBERS OF BOARD OF SUPERVISORS UNDER SECTION 1455,
C.G.L. 1927, ON LANDOWNERS' FAILURE TO HOLD
ANNUAL ELECTIONS

Dear Sir:

This will acknowledge receipt of your letter of December 12th and also copy of the audit report on the New Smyrna-DeLand Drainage District. You call my attention to the fact that this audit indicates that the "members of the Board of Supervisors have handled the affairs of the district laxly and largely to their personal advantage and to the detriment of both bondholders and landowners" and further that "landowners' meetings, required by law to be held each year, have never been called by the Supervisors."

You request me to advise you whether you or the Board of Drainage Commissioners may remove or suspend the members of the Board of Supervisors of the district, or whether members of the Board of Drainage District may proceed to appoint three new members under Section 1455. Compiled General Laws, 1927, as is provided in case the landowners fail to elect.

In reply I wish to advise that the latter procedure would probably be the most effective and would probably accomplish the purpose mentioned quicker. I am of the opinion that the Drainage Commissioners would have the right to appoint supervisors in accordance with Section 1455 of the Compiled General Laws of 1927.

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August 16, 1937.

FIRE DISTINGUISHERS—BUSSES, SCHOOLS, HOTELS AND
RESTAURANTS TO BE EQUIPPED WITH*Dear Sir:*

Compiled General Laws of Florida, 1927, Section 3372, requires every hotel and restaurant to be provided with one fire extinguisher of a size and style approved by the National Board of Fire Underwriters, on each floor containing 2500 square feet, or less, of floor area, and one additional fire extinguisher on each floor, for each additional similar amount of floor space.

The Fire Code of the public schools of Florida provides that each school building shall have at least one effective fire extinguisher on each floor of the building. A copy of the Fire Code is enclosed.

The regulations of the Florida Railroad Commission require that all busses be equipped with at least one fire extinguisher.

August 6, 1938.

GAMBLING—CHAPTER 18143, ACTS 1937, PROHIBITS ONLY
COIN OPERATED DEVICES*Dear Sir:*

This will acknowledge receipt of your letter of August 4, requesting my opinion as to whether or not certain marble machines may be operated in the event it is not necessary to insert coins therein in order to permit the operator to operate the same.

It is my opinion that Chapter 18143, Laws of Florida 1937, only prohibits coin operated devices and that if this feature is taken off the machines in question, and it is not necessary to insert a coin therein in order to operate same, the machines would not be prohibited by this Act. However, if the machines are used for the purpose of gambling, I think they would be prohibited as gambling devices.

I think that it would be necessary to take the slot or coin mechanism off the machines because, otherwise, if this is left on the machines they would be adapted for use as coin operated devices and would therefore be prohibited under this Act, and under the Supreme Court of Florida's interpretation thereof.

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September 15, 1938.

GAMBLING—PLAYING GAME FOR CONSIDERATIONS AND PRIZES CONSTITUTE

Dear Sir:

This will acknowledge receipt of your letter of September 13th, inquiring whether or not, in my opinion, the playing of the game herein-after described, would constitute gambling under the statutes of this State. Your described the game to me in your letter as follows:

"Each player is furnished with a card or cards upon which there are twenty-five squares. The center square is blank, and the other twenty-four squares containing numbers varying from one to seventy-five. Each player is also furnished with a dart. Upon a board are arranged numbers from one to seventy-five. When the game is played, the first player takes his turn by throwing his dart at a desired number on the board (which is not moving or turning) that remains still until the thrower has thrown the dart for the desired number, and is successful each player having that number on their card covers same. Should some other number be hit, other than the desired number then all players having that number on their cards may cover same. The play then progresses, each player throwing his dart until some player has covered four numbers which with the center blank makes a complete line of five squares, covered diagonally, vertically or horizontally, at which time this player calls are DART. And upon inspection, if his card is found correctly covered, then that player is declared the winner, and receives coupons for points which are redeemable at the discretion of the player."

Under the law of this State, the Attorney General is only authorized to render opinions to the Governor, the members of his Cabinet, their departments, and the State's Attorneys, and, therefore, strictly speaking, I am unauthorized to give you this opinion. However, since it is a matter involving the public interest, I will state as follows:

In my opinion, the playing of the game, for a consideration, and upon which prizes are offered, which may be redeemed, would constitute the game a gambling game, contrary to the statutes of this State, and it seems to me that the case of *Creash, et al. vs. State*, reported in 179 So. p. 149, is direct authority for this conclusion. In this case the Court held:

"A contest for a prize, purse, premium, stake, bet, or wager containing the element of chance, and in which one person risks his money or other thing of value with no prospect of return except to get for nothing the money or goods of another, is

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'gambling,' regardless of the name by which it is called, the implements employed to accomplish the act, or the manner in which it is conducted."

There does not seem to me to be any difference in effect in the operation of the game which you described to me, and the one which was used in the Creash case, and which the Supreme Court held constituted a gambling game.

October 7, 1937.

GAMBLING—GAMES OF CHANCE BY LOT

Dear Sir:

This is in reply to your letter of September 28th, with enclosure.

You state that a number game is being operated in St. Petersburg, which is known as "bolivo kisses." The operation of this game consists in the sale of a bag of candy kisses for ten cents, with a ticket bearing a number between 1 and 100 in the bag. At the close of business each day, a bag containing one hundred balls with numbers from 1 to 100 is brought out, the balls are shaken up in the bag, and one ball is withdrawn. The number on the ball so withdrawn from the bag is the winning number, and the person holding the ticket obtained from his bag of candy which corresponds with the number on the ball, wins \$6.00.

It is my opinion that this plan is clearly illegal. In support of my opinion I call your attention to the case of *Bueno vs. State*, 23 So. 862 and to Section 7669, Compiled General Laws of Florida. The mere fact that the candy accompanies the tickets does not, in my opinion, make the plan any less a lottery.

July 10, 1937.

HOUSE RESOLUTION NO. 59, 1937—INSTALLATION ELECTRIC
ROLL CALL SYSTEM

Dear Sir:

Pursuant to your request I have made an investigation of House Resolution No. 59, 1937 Legislature, Regular Session, which provides for the installation of an electrical roll call system in the new Chamber of the House of Representatives, now under construction in the north wing of the Capitol, and providing that the Speaker of the House of Representatives appoint a Special Committee of three members of the House to enter into such negotiations and make contract therefor.

In reply I beg to say in my opinion the provisions of said resolution may be carried out and the cost for such purpose may be paid under

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the provisions of Section 103, Compiled General Laws of Florida, in connection with said Resolution No. 59.

May 25, 1937.

HUMAN TISSUES ON SLIDES—DISTRIBUTION FOR EDUCATIONAL
AND SCIENTIFIC RESEARCH WORK NOT IN VIOLATION OF LAW.

Dear Sir:

You request my opinion as to whether or not a person who distributes human tissues on slides for microscopic and other examinations in educational and scientific research work to laboratories, medical colleges, etcetra, would be violating the provisions of Section 7589 of Compiled General Laws of Florida, 1927. Section 7589 reads as follows:

"Whoever buys, sells or has in his possession for the purpose of buying or selling or trafficking in the dead body of any human being shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars."

It is my opinion that the distribution of such human tissue would not be a violation of this statute. The preparation of such specimens in the State, however, might be construed as a violation if these specimens were prepared from the body of a dead human being.

I do not find any other laws which would make it a crime to distribute such specimens for strictly research and experimental purposes to scientific institutions.

October 8, 1937.

HUNTING—FUR, CLOSED SEASON FOR DEALERS

Dear Sir:

I am in receipt of your letter of the 6th instant, with reference to the open season for dealers in furs under the provisions of that part of Section 56 of Chapter 13,644 of 1929, now Section 1977 (56), Compiled General Laws of Florida, 1936 Supplement, reading as follows:

"* * * The skins of fur-bearing animals lawfully taken may be bought, sold and transported and possessed at any time during the open season and for a period of thirty days after the close of such open season: Provided, that these restrictions as to purchase, possession, transportation and sale shall not apply to manufactured furs and fur dealers."

You state there are conflicting opinions as to the meaning of the last two words, above quoted, to-wit: "fur dealers." You further state that

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dealers licensed under Section 61 of said Chapter 13,644, now Section 1977 (61), Compiled General Laws of Florida, 1936 Supplement, are claiming exemption as to a closed season, under the above quoted provision of Section 56.

Section 61 of Chapter 13,644 provides for a license to be secured by a dealer or buyer of green or dried furs. If such dealer in green or dried furs were not to be governed by the closed season provided for in Section 56, the very purpose of Section 56 would appear to be largely defeated. It is, therefore, my opinion that fur dealers mentioned in Section 56 relates to dealers in manufactured furs.

July 16, 1938.

INSECTICIDES—SECTION 2 OF CHAPTER 17992, ACTS OF 1937—
INFORMATION ON LABEL

Dear Sir:

You state that certain manufacturers of agricultural insecticides object to stating on the packages containing their products the active ingredients contained therein. They contend that to do this would be tantamount to disclosing their formula to their competitors. They offer to file with the Commissioner of Agriculture or the State Chemist a confidential statement of the formula and active ingredients which may be considered as their guarantee of the enforcement of the law.

The first paragraph of Section 2 of Chapter 17992, Laws of Florida, Acts of 1937, reads as follows:

"All corporations, firms or persons, before selling or offering for sale any agricultural insecticide or fungicide for use within this State shall brand or attach to each separate package in which it is sold a plainly printed label showing the brand or name of said agricultural insecticide or fungicide, the net weight or volume content of the package, the name and address of the manufacturer, firm or person registering said agricultural insecticide or fungicide; the minimum percentage guaranteed to be present of total arsenic and maximum percentage of water-soluble arsenic if such are present, and the names and percentage by weight or volume, of each and every ingredient for which insecticidal or fungicidal properties are claimed and the total percentage of inert ingredients."

It is my opinion that the statutory provisions above set forth mandatorily require a statement of active ingredients to be printed on the package or to be plainly printed on a label attached to the package. To construe the statutory provisions hereinabove set forth in the manner suggested by the manufacturers would be to ignore said statutory pro-

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visions. This is something which administrative officers, who must enforce the law as it is written, cannot properly do.

June 9, 1937.

LOTTERY—CLUB PLAN AND RULES CONSTITUTE

Dear Sir:

This is in reply to your letter of June 8th in which you enclosed what is designated "Club Bulletin." So that the question involved can be clearly understood, I quote the "Club Bulletin":

"CLUB PLAN AND RULES

"We, the Directors of the University Social Club, solicit your membership, offering you the following benefits:

"1. A Club Room will be maintained for your convenience with reading room, refreshments and other forms of entertainment.

"This is your Club, and we beg you to use it as such.

"2. On the 5th of each month, unless it falls on a Sunday, (then it will be the following day) the Club has election of officers. Those picked serve for one month only, at a salary based on the membership for the month prior to their election. (Election is through drawing, same as Bank Night.) For example, based on 10,000 memberships; President, \$2,000.00; 1st Vice President, \$1,250.00; 2nd Vice President, \$750.00; 3rd Vice President, \$500.00; Secretary, \$250.00; Treasurer, \$250.00.

"The first election of officers will be held August 5, 1937.

"You are not obliged to be present to be elected, and if elected, there is no work or responsibility that you have to assume.

"Your salary will be paid you at the time of the election, and if you are not present, you will be notified, and can come to the Club Room to get your salary.

"UNIVERSAL SOCIAL CLUB,

St. Petersburg, Florida."

It is my opinion that the plan of operation disclosed by the "Club Bulletin" constitutes a lottery.

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July 8, 1937.

NEWSPAPERS—LEGAL QUALIFICATIONS NECESSARY FOR
ELIGIBILITY TO PUBLISH LEGAL NOTICES*Dear Sir:*

This is in reply to your letter of July 2nd requesting my opinion concerning "Florida Labor Advocate," a labor paper published in Tampa. You request my opinion as to whether or not this paper is qualified under the law to publish legal notices and particularly the legal notices provided in Chapter 18296 enacted at the 1937 Session of the Florida Legislature. You state that this paper has been published continuously for more than fifteen years, is on sale on the news stands and by newsboys, has a wide circulation, has been entered as second class matter in the post office at Tampa and has been handling the publication of legal notices such as delinquent tax lists and other general legal notices for local attorneys for many years.

It further appears from the correspondence in the files that the circulation is not confined to members of organized labor but that the paper is subscribed for by lawyers, doctors and other business establishments in the community. While the information furnished me does not definitely show whether or not this paper has been registered with the post office as second class matter for more than one year, there is sufficient evidence to assume that this is probably the situation.

From the information before me concerning this paper, and assuming that it has been registered with the post office as second class matter for more than a year, it is my opinion that it complies with the legal requirements set forth in Section 4901, Compiled General Laws of Florida, 1927, and Section 4274 (1) Compiled General Laws of Florida, permanent supplement. It would therefore be qualified to publish notices prescribed under Chapter 18296 enacted at the 1937 Session of the Florida Legislature.

May 26, 1938.

PENSIONS—WIDOWS NOT DEBARRED FOR REMARRIAGE—
CHAPTER 18,047, ACTS OF 1937*Dear Sir:*

With reference to your inquiry as to whether a widow of a Confederate soldier is debarred from pension after her remarriage and to a man, who is not an Ex-Confederate soldier, I find that this office on January 16, 1937, passed upon such question in a letter addressed to

* * *

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In the above mentioned letter, Section 1 of Chapter 18,047, Acts of 1937, was quoted as follows:

"That the widow of any person entitled to pension under the law of this State by reason of service in or for the Confederate States during the War between the states shall not be debarred from pension on account of remarriage."

In the last paragraph of said letter, the following opinion was given:

"In reply to your inquiry I beg to say that this Act allows a pension to continue to a Confederate pensioner's widow who has remarried, regardless of whether or not the husband of such marriage is or is not a Confederate pensioner."

The opinion expressed in said letter appears to be a correct interpretation of said Chapter 18,047, Acts of 1937, and I am advised by the State Comptroller that eleven applications have already been approved by the State Board of Pensions and are now on the pension roll by virtue of said Act.

Chapter 18,047, Acts of 1937, is still in effect and, in my opinion, the widow of a Confederate soldier making application for pension cannot be debarred from pension on account of remarriage.

June 16, 1937.

PENSIONS—EFFECTIVE DATE OF INCREASE

Dear Sir:

I am in receipt of your letter of the 14th instant, in re Chapter 18046, Acts of 1937, increasing Confederate pensions from \$40.00 per month to \$50.00 per month, which Act became effective on June 8th, 1937.

In reply to your inquiry I beg to say that pensioners should be paid for the month of June, 1937, as follows: For the first 7 days of said month on the basis of \$40.00 per month and should be paid for the remainder of said month upon the new basis of \$50.00.

June 16, 1937.

PENSIONS—WIDOWS NOT DEBARRED FOR REMARRIAGE—
CHAPTER 18047, 1937

Dear Sir:

I am in receipt of your letter of the 14th instant enclosing copy of Chapter 18047, Acts of 1937, the first Section of which reads as follows:

"That the widow of any person entitled to pension under the law of this State by reason of service in or for the Con-

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federate States during the War between the states shall not be debarred from pension on account of remarriage."

In reply to your inquiry I beg to say that this Act allows a pension to continue to a Confederate pensioner's widow who has remarried, regardless of whether or not the husband of such marriage is or is not a confederate pensioner.

June 16, 1937.

**PENSIONS—CHAPTER 18045—REQUEST FORM FOR BALANCE OF
PENSION DUE DECEASED PENSIONER**

Dear Sir:

I have your letter of the 14th inst., enclosing copy of Chapter 18045, Acts of 1937, and referring to Section 2 thereof, which directs payment to the estate of pensioners. You enclose a form which you state was formerly used in your Department in which all of the heirs of the deceased pensioner designate some one to act as their agent to receive the amount due a deceased pensioner and you make inquiry if said form will be sufficient for the purposes of Chapter 18045.

In reply I beg to say that the said form would appear to be sufficient in cases where the deceased pensioner leaves no estate to be administered. Where an estate is left requiring administration the administrator appointed by the Court would appear to be the proper one to make application for such balance due. In this connection, I would suggest that it might be well to secure definite information as to the estate, if any, of the deceased pensioner.

April 12, 1938.

**PHONOGRAPH RECORDS—ROYALTY REQUIRED IF USED FOR
PUBLIC PERFORMANCE FOR PROFIT**

Dear Sir:

This will acknowledge receipt of your letter of April 8, inquiring as to whether or not phonograph records can be used for commercial purposes in this state without payment of royalty.

The Legislature in 1937 passed Chapter No. 17807 which allows phonograph records to be played in this State without payment of royalty, however, the United States District Court, in and for the Northern District of Florida, has passed an injunction restraining the law enforcement officers from enforcing the provisions of this Act.

It is my opinion that phonograph records cannot now be used for public performance for profit without the payment of royalty.

MISCELLANEOUS

March 11, 1937.

RAILROADS—CLAIMS ON STATE LANDS

Dear Sir:

I am in receipt of your letter of the 2nd instant enclosing communication from Mr. * * *, under date of the 28th ultimo, who you state is one of the appraisers representing the State of Florida with reference to the estate of * * *. Mr. * * * refers to a report of the Apalachicola Northern Railroad Company containing the statement for the year ending June 30, 1913, that it had been granted by the Legislature of Florida 5,000 acres of land per mile of road for the 80 miles of road constructed from River Junction to Apalachicola, but that the lands had not yet been distributed. He further states that the chances are that this does not amount to anything but in his appraisal it is desired to have some definite information with reference thereto.

The records in the office of the Secretary of State show that the Apalachicola Northern Railroad Company was issued Letters Patent for May 9, 1903.

Chapter 5277, Laws of Florida, Acts of 1903, makes an appropriation of \$5,000 acres of swamp land per mile for each mile of railroad constructed by said company under its charter to be started in two years and completed within four years from passage of said Act, and it further provides that the State shall not be liable for any deficiency in land.

I am informed in the office of the Commissioner of Agriculture that no deed in pursuance of said statute appears to be of record in that office.

I find that on January 27, 1913, that the said railroad company brought suit against the Trustees of the Internal Improvement Fund and the State Board of Education for deeds in accordance with said above statute. Demurrer was filed by the Hon. * * * for the Trustees of the Internal Improvement Fund and the State Board of Education. Demurrer was sustained by the Circuit Judge of Leon County and nothing further appears of Court record until December 22, 1914, when motion to dismiss the said case was filed after which no further proceedings appear to have been had in said case. The above covers all of the records in said case that have been found except reference to said suit on page 600 of Volume 10 of the reports of the Trustees of the Internal Improvement Fund. The railroad company appears to have realized that the said Act is of no avail to said company. It would be out of the question for the State to comply with the provision of said Act and carry out the trust relating to said lands. In such situation, I fail to see how any claim under said Act could be considered as a valuable asset of said company.

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July 10, 1937.

SENATE RESOLUTION 34—AIR CONDITIONING SYSTEM—COSTS
MAY BE PAID UNDER SECTION 103 C.G.L.*Dear Sirs:*

I have made an investigation with reference to Senate Resolution No. 34 of the 1937 Legislature, Regular Session, which provides that the Secretary of State be authorized, directed and empowered to contract for and install an air conditioning system in the Senate Chamber and certain Senate office rooms and for necessary repairs and improvements to the lighting system in the Senate Chamber and to the rug on the floor of the Senate Chamber, and providing that the cost thereof shall not exceed the sum of \$15,000.00, which resolution by amendment also authorizes and directs the Secretary of State to contract for and install one escalator or elevator not exceeding in cost the sum of \$12,000.00.

In reply I beg to say in my opinion such improvements are authorized and may be paid for under the provisions of Section 103, Compiled General Laws of Florida, 1927, and the provisions of said Resolution No. 34.

December 31, 1938.

SOLDIERS' AND SAILORS' HOME, OLD CONFEDERATE

Dear Sir:

I have your letter of the 28th inst., * * * relative to the above captioned matter and suggesting that the Old Soldiers' and Sailors' Home be used as an institution for the care of the adult blind of Florida upon being turned over to the State, under the provisions of Chapter 8505, Acts of 1921.

In reply I beg to say I have looked into the provisions of said Act and find it is provided that the assets of the Old Confederate Soldiers' and Sailors' Home Association be turned over to the Board of Commissioners of State Institutions in trust for certain specific purposes. Among the purposes of the trust are the care of Ex-Confederate Soldiers and Sailors, and when the necessity for the maintenance of the institution as a home for such soldiers and sailors shall no longer exist the assets, real and personal, coming into the hands of the Board shall be converted into cash and covered into the Treasury and invested by the State Treasurer, and the proceeds shall be used for the endowment of scholarships at the University of Florida and the Florida State College for Women. It further provides that whenever it shall appear that no one can qualify under the statute for such scholarships, the Board shall use said endowment fund to erect a permanent memorial to the Old Con-

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federate Soldiers and Sailors in the form of a building upon the campus of the University of Florida or Florida State College for Women and suitably mark such building as a memorial to the Old Confederate Soldiers and Sailors.

Under the terms of the Act it does not appear that such assets may be used for a building for the blind or for any purpose other than the statutory purposes above enumerated.

July 7, 1938.

STATE CONSTITUTION—AMENDMENT

Dear Sir:

In reply to your letter of the 6th instant, I beg to call your attention to Section 1 of Article XVII of the State Constitution, reading as follows:

"Either branch of the Legislature, at a regular session thereof, may propose amendments to this Constitution; and if the same be agreed to by three-fifths of all the members elected to each House, such proposed amendments shall be entered upon their respective Journals with the yeas and nays, and published in one newspaper in each county where a newspaper is published, for three months immediately preceding the next general election of Representatives, at which election the same shall be submitted to the electors of the State, for approval or rejection. If a majority of the electors voting upon the amendments, at such election shall adopt the amendments the same shall become a part of the Constitution. The proposed amendments shall be so submitted as to enable the electors to vote on each amendment separately."

April 12, 1938.

STATE PROPERTY—LAND TO CENTER OF PENSACOLA STREET

Dear Sir:

I have your request for an opinion as to whether the sidewalk that was constructed along the south side of Pensacola Street, is on State owned property. You state that grant has been withheld on the cost of constructing this sidewalk, on the assumption that expenditure was made on land that did not belong to the State. You further state that you are under the impression that, as a general rule, where streets and alleys have been dedicated for the use of the public, title of abutting property extends to the center of the street.

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In my opinion your impression is correct. See *T. & K. W. Ry. Co. vs. Lockwood*, 15 So. 237. Also see the case of *Rawls vs. Tallahassee Hotel Co.*, 31 So. 237, as this case involved property located within the City of Tallahassee, Florida.

I also call your attention to Vol. 5 of the Compiled General Laws of Florida, page 4741. This is the historical section of this compilation, and it gives a complete history of the title to the land known as Capitol Square.

I have examined the records that we have in the Land Office and in the Secretary of State's office, and a copy of the original plat in the Clerk of the Circuit Court's office of Leon County, Florida, and I cannot find any deeds out of the State of Florida to this street known as Pensacola Street. I, therefore, conclude, as I have said before, that title to the center of this street and, therefore, to the land upon which the sidewalk is built, is in the State of Florida.

September 7, 1937.

TRUST FUNCTIONS—CORPORATIONS OR ASSOCIATIONS NOT
AUTHORIZED TO EXERCISE UNDER SECTION 6145, C.G.L., 1927

Dear Sirs:

Replying to your letter of the 4th instant, I beg to advise that Section 6145 of the Compiled General Laws of Florida, 1927, makes it unlawful for any corporation or association to exercise any trust functions, duties, or powers within the State of Florida, or to enjoy the emoluments, profits, or benefits therefrom, without having first obtained a charter under the laws of the State of Florida granting the exercise of such powers, duties and functions.

February 24, 1938.

TRUST FUNDS—INVESTMENT OF FUNDS HELD BY EXECUTORS,
ADMINISTRATORS, TRUSTEES, GUARDIANS

Dear Sir:

Subsection (c) of Section 1, Chapter 17949, Laws of Florida, Acts of 1937, authorizes the investment of funds held by executors, administrators, trustees, and guardians, in bonds or other interest-bearing obligations of any incorporated county, city, town, school district, or road and/or bridge district within the State of Florida, which has according to the Federal Census next preceding the date of making the investment a population of not less than two thousand inhabitants, and for which the full faith and credit of such political subdivision has been pledged, on the condition that such political subdivision or its successor

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through merger, consolidation, or otherwise, has not within five years previous to the making of such investment defaulted for more than six months in the payment of any part of the principal or interest of its bonded indebtedness.

If a political subdivision has outstanding more than one issue of bonds, and has defaulted in the payment of either principal and interest of one of such issues for more than six months within the preceding five years, such default renders all issues of that particular subdivision ineligible for investment under subsection (c) of Section 1 of Chapter 17949.

Default in the payment of principal or interest of bonds by an incorporated city or town or special district within a county, would not render the bonds of the county in which such city, town, or district is located, ineligible for investment under this provision of the law. Nor would the fact that the county had defaulted in the payment of principal or interest of its bonds render the bonds of an incorporated city or town or special district within such county ineligible for investment of such funds.

Where a city defaulted in the payment of principal or interest of its bonds from July 1, 1933, to July 1, 1934, the bonds of such city would not become eligible for investment of funds under the provisions of Subsection (c) of Section 1, Chapter 17949, until after July 1, 1939.

December 17, 1938.

WORLD'S FAIR—AUTHORITY OF HOTEL COMMISSION, CONSER-
VATION DEPARTMENT, FISH AND GAME DEPARTMENT
TO USE ADVERTISING FUNDS

Dear Sir:

In response to your oral request for an opinion as to whether or not the Hotel Commission and the Game and Fresh Water Fish Commission may expend money for advertising purposes at the New York World's Fair in 1939, I wish to advise that the Hotel Commission did have the authority to advertise Florida and Florida Hotels, et cetera, under Section 3380 of the Compiled General Laws of 1927. However, they do not now have such authority as the Legislature of 1933 amended said Section. See Section 3380 of the Compiled General Laws of 1927, Volume 3 of the Permanent Supplement. This, therefore, eliminates the Hotel Commission from further consideration.

As to the Game and Fresh Water Fish Department, same was created by Chapter 11838, Acts of the Legislature of 1927, and at that time was given the authority with your approval to

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"* * * print and publish bulletins and other publications and use other means of disseminating information concerning game, non-game birds, fresh-water fish and fur-bearing animals."
(Section 9.)

This has been carried through the subsequent Acts relating to that department. See Acts of 1929, Chapter 13644. However, the Legislature of 1933 abolished this Department. See Chapter 16178, Acts of 1933. And all of the power and authority that was vested in said Department by subsequent Acts was transferred to the Conservation Department. However, this Department was created under the Acts of the Legislature of 1935, Chapter 17016, and is now known as the Fresh Water Fish and Game Commission. It was given all of the power that had been previously possessed by the Conservation Department. Therefore, it still has the authority with your approval to "print and publish bulletins and other publications and use other means of disseminating information concerning game, non-game birds, fresh-water fish and fur-bearing animals."

I am, therefore, of the opinion that said Commission with your approval would have the authority to expend money in connection with the New York World's Fair of 1939 for the purpose of "disseminating information concerning game, non-game birds, fresh-water fish and fur-bearing animals" and for no other purposes.

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